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2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 Case No. 05-44481
5 - - - - -
6 In the Matter of:
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8 DELPHI CORPORATION,
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10 Debtor.
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12 - - - - -
13
14 October 27, 2006
15 10:35 AM
16
17
18 One Bowling Green
19 Room 620-1
20 New York, NY 10004
21
22 B E F O R E:
23
24 HON. ROBERT D. DRAIN,
25 U.S. BANKRUPTCY JUDGE

1 **DELPHI CORPORATION**

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3 **Objection to Motion /Objection of Certain**
4 **Utility Companies to Motion for Interim and**
5 **Final Orders Under 11 U.S.C. Sections 105,**
6 **366, 503, and 507 (I) Prohibiting Utilities**
7 **from Altering, Refusing, or Discontinuing**
8 **Services on Account of Pre-petition Invoices**
9 **and (II) Establishing Procedures for**
10 **Determining Requests for Additional Assurance**

11

12 **Motion to Allow Motion For Interim And Final**
13 **Orders Under 11 U.S.C. Sections 105, 366, 503,**
14 **And 507 (I) Prohibiting Utilities From**
15 **Altering, Refusing, Or Discontinuing Services**
16 **On Account Of Pre-petition Invoices And (II)**
17 **Establishing Procedures For Determining**
18 **Requests For Additional Assurance**

19

20 **Motion to Authorize Motion For Order Under 11**
21 **U.S.C. Sections 105, 362, And 541 And Fed.R.**
22 **Bankr. P. 3001 Establishing Notification And**
23 **Hearing Procedure For Trading In Claims And**
24 **Equity Securities**

25

1 **DELPHI CORPORATION**

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3 **Objection to Motion /Objection Of Duraswitch
4 Industries, Inc. To Debtors' Motion For An
5 Order Under 11 U.S.C. 365(a) Authorizing
6 Rejection Of License Agreement**

7

8 **Motion to Authorize Motion For Order Under 11
9 U.S.C. Sections 361, 362, 363, 364(c), 364(d)
10 And 364(e) And Fed. R. Bankr. P. 2002, 4001
11 And 9014 (I) Authorizing Debtors To Obtain
12 Secured Post-petition Financing On
13 Superpriority Secured And Priming Basis, (II)
14 Authorizing Use Of Cash Collateral, (III)
15 Granting Adequate Protection To Pre-petition
16 Secured Lenders, (IV) Granting Interim Relief,
17 And (V) Scheduling A Final Hearing Under Fed.
18 R. Bankr. P. 4001 (b) and (c)**

19

20 **Response Debtors' Omnibus Reply To Objections
21 To DIP Financing Motion**

22

23 **Notice of Hearing Proposed First Omnibus
24 Hearing Agenda**

25

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3 **Motion to Quash A Subpoena Non-Party's Motion**
4 **to Quash Subpoena**

5

6 **Notice of Proposed Order Notice Of Filing Of**
7 **Proposed Final Order Under 11 U.S.C. Sections**
8 **105, 361, 362, 364(c)(1), 364(c)(2),**
9 **364(c)(3), 364(d)(1), And 364(e) And Fed. R.**
10 **Bankr. P. 2002, 4001 And 9014 (I) Authorizing**
11 **Debtors To Obtain Post-petition Financing,**
12 **(II) To Utilize Cash Collateral And (III)**
13 **Granting Adequate Protection To Pre-petition**
14 **Secured Parties**

15

16 **Motion to Approve Motion For Order Under 11**
17 **U.S.C. Sections 102(1) And 105 And Fed. R.**
18 **Bankr. P. 2002(m), 9006, 9007, And 9014**
19 **Establishing (I) Omnibus Hearing Dates, (II)**
20 **Certain Notice, Case Management, And**
21 **Administrative Procedures, And (III)**
22 **Scheduling Initial Case Conference In**
23 **Accordance With Local Bankr. R. 1007-2(e)**

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3 Motion to Authorize Motion For Order Under 11
4 U.S.C. Sections 361, 362, 363, 364(c), 364(d)
5 And 364(e) And Fed. R. Bankr. P. 2002, 4001
6 And 9014 Authorizing Debtors To Obtain Secured
7 Post-petition Financing On Superpriority
8 Secured And Priming Basis, (II) Authorizing
9 Use Of Cash Collateral, (III) Granting
10 Adequate Protection To Pre-petition Secured
11 Lenders, (IV) Granting Interim Relief, And (V)
12 Scheduling A Final Hearing Under Fed. R.
13 Bankr. P. 4001 (b) and (c)

14

15 Motion to Authorize Motion For Order Under 11
16 U.S.C. Sections 327, 330, And 331 Authorizing
17 Retention Of Professionals Utilized By Debtors
18 In The Ordinary Course Of Business

19

20 Motion to Approve Motion For Administrative
21 Order Under 11 U.S.C. Section 331 Establishing
22 Procedures For Interim Compensation And
23 Reimbursement Of Expenses Of Professionals

24

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3 Motion to Authorize Motion For Order Under 11
4 U.S.C. Sections 361, 362, 363, 364(c), 364(d)
5 And 364(e) And Fed. R. Bankr. P. 2002, 4001
6 And 9014 Authorizing Debtors To Obtain Secured
7 Post-petition Financing On Superpriority
8 Secured And Priming Basis, (II) Authorizing
9 Use Of Cash Collateral, (III) Granting
10 Adequate Protection To Pre-petition Secured
11 Lenders, (IV) Granting Interim Relief, And (V)
12 Scheduling A Final Hearing Under Fed. R.
13 Bankr. P. 4001 (b) and (c)

14

15 Motion to Authorize Motion For Order Under 11
16 U.S.C. Sections 361 And 363(b) And Fed. R.
17 Bankr. P. 4001(c) Authorizing Debtors To
18 Continue Honoring Pre-petition Insurance
19 Premium Finance Agreement And Continue Grant
20 Of Security Interest To Insurance Premium
21 Finance Company

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23 Transcribed by: Esther Accardi

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1 DELPHI CORPORATION

2 A P P E A R A N C E S :

3

4 SKADEN, ARPS, SLATE, MEAGHER, & FLOM, LLP

5 Four Times Square

6 New York, New York 10038

7

8 BY: JOHN WM. BUTLER, JR., ESQ.

9 DOUGLAS P. BARTNER, ESQ.

10 KAYALYN A. MARAFIOTI, ESQ.

11 THOMAS J. MATZ

12

13 LATHAM & WATKINS, LLP

14 885 Third Avenue

15 Suite 1000

16 New York, New York 10022

17

18 BY: ROBERT ROSENBERG, ESQ.

19

20 KELLEY DRYE & WARREN LLP

21 101 Park Avenue

22 New York, New York 10176

23

24 BY: MARK R. SOMERSTEIN, ESQ.

25

1 **DELPHI CORPORATION**

2

3 **WARNER NORCROSS & JUDD, LLP**

4 **900 Fifth Third Center**

5 **Grand Rapids, Michigan 49503**

6

7 **BY: GORDON J. TOERING, ESQ.**

8

9 **CURTIS, MALLET-PROVOST, COLT & MOSLE LLP**

10 **101 Park Avenue**

11 **New York, New York 10178**

12

13 **BY: STEVEN J. REISMAN, ESQ.**

14

15 **GOODWIN PROCTOR LLP**

16 **599 Lexington Avenue**

17 **New York, New York 10022**

18

19 **BY: ALLAN S. BRILLIANT, ESQ.**

20

21

22

23

24

25

1 **DELPHI CORPORATION**

2

3 **SCHAEFFER & WEINER, PLLC**

4 **40950 Woodward Avenue**

5 **Suite 100**

6 **Bloomfield Hills, MI 48304**

7

8 BY: **MAX NEWMAN, ESQ.**

9

10 **SIMPSON THACHER & BARTLETT, LLP**

11 **425 Lexington Avenue**

12 **New York, New York 10017**

13

14 BY: **KENNETH ZIMEN, ESQ.**

15

16 **WEIL, GOTSHAL & MANGES, LLP**

17 **767 Fifth Avenue**

18 **New York, New York 10153**

19

20 BY: **MARTIN BIENENSTOCK, ESQ.**

21

22

23

24

25

10

1 **DELPHI CORPORATION**

2

3 **BODMAN LLP**

4 **100 Renaissance Center**

5 **Detroit, Michigan 48243**

6

7 **BY: RALPH E. McDOWELL, ESQ.**

8 **(via telephone)**

9

10

11 **JOEL APPELBAUM, ESQ.**

12 **(via telephone)**

13

14 **TIMOTHY PASCOE, ESQ.**

15 **(via telephone)**

16

17 **TED MARES, ESQ.**

18 **(via telephone)**

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1 DELPHI CORPORATION

2 P R O C E E D I N G S

3 THE COURT: All right. Please
4 be seated. Delphi Corporation?

5 MR. BUTLER: Your Honor, good
6 morning. My name is Jack Butler from
7 the law firm of Skadden, Arps, Slate,
8 Meagher & Flom LLP, here with my
9 partner, Kayalyn Marafioti and our
10 special counsel, Doug Bartner, for the
11 purposes of our October 27th omnibus
12 hearing. This is the monthly omnibus
13 hearing for the month of October. Your
14 Honor, we have filed and served a
15 proposed first omnibus hearing agenda
16 and with Your Honor's permission, we'll
17 follow that agenda.

18 THE COURT: Okay.

19 MR. BUTLER: Your Honor, the
20 first item on that agenda, item number 1
21 is the Interim Compensation Order,
22 docket number 11. We had been in
23 discussions with the creditors'
24 committee and with the United States
25 Trustee regarding the form of that

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2 order. With respect to the inner comp
3 arrangements, we believe we have a
4 proposed form of final order. We're
5 going to be dealing with that over the
6 next week. We ask Your Honor to take
7 that up on the November 4th adjourned
8 hearing so we can get a sign-off from
9 the U.S. Trustee on the form of order.

10 THE COURT: Okay. And are
11 those same people talking about, you
12 know, a fee committee?

13 MR. BUTLER: Yes, Your Honor,
14 and in fact the United States Trustee
15 observed to us that even under the inner
16 comp order, the first monthly statements
17 in this case aren't generated until
18 November 30th and that the November 29th
19 omnibus hearing would be an appropriate
20 time to take that up and they wanted to
21 consider certain matters further and
22 consult with the committee.

23 THE COURT: Okay.

24 MR. BUTLER: So that portion,
25 Your Honor -- the fee committee portion

1 DELPHI CORPORATION

2 would come up on the November 29th
3 hearing.

4 THE COURT: Okay.

5 MR. BUTLER: Your Honor, the
6 next items, and I'll just take items 2
7 all the way through item 8, are
8 retention applications for the debtors'
9 professionals that have been pursued to
10 which an interim orders had been
11 entered. The creditors' committee is in
12 the process of completing their review
13 in these things. They were appointed
14 last Monday, Your Honor, a week ago. I
15 should report to the Court that
16 following their appointment in an
17 organizational meeting held, I think, on
18 the 17th of October, the -- we held our
19 first fall committee meeting with the
20 committee on the 25th, this Tuesday, the
21 debtors did, and had a full agenda with
22 the committee. The committee asked us
23 if we would adjourn all of these to
24 November 4th so they can complete their
25 review given the press of other matters.

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2 The U.S. Trustee has also advised us
3 that they expect to have completed their
4 review for purposes of a final order on
5 November 4th.

6 THE COURT: All right. Okay.

7 MR. BUTLER: Your Honor, the
8 next item on the agenda is item number
9 9. This is the ordinary course of
10 professionals item. We had discussions
11 with United States Trustee about the OCP
12 order. Essentially, the form of relief
13 that we're going to request in this
14 motion is going to change and rather
15 than have a multi-tiered order, there
16 will be an order that will basically say
17 that any professional who exceeds 50,000
18 a month or \$500,000 for the aggregate
19 case, will have to file a retention
20 application and go through the normal
21 327(a) or (e) approach. Anyone less
22 than that can be governed by the OCP
23 order. We're working on the final form
24 of order with the U.S. Trustee and
25 intend to present it to Your Honor at

1 DELPHI CORPORATION

2 the November 4th adjourned hearing.

3 THE COURT: All right.

4 MR. BUTLER: Your Honor, number
5 10 on the agenda, is the claims trading,
6 the final hearing on the claims trading
7 motion. This is the motion that is
8 intended to help preserve our NLO and
9 other tax positions and other asset
10 positions. This, by agreement with the
11 Cleary firm, was removed to the November
12 29th hearing. There's continued work
13 being done trying to work on a
14 consensual final order.

15 THE COURT: Okay. That's fine.

16 MR. BUTLER: And finally, Your
17 Honor, also on the agenda is number 11,
18 is the Rothschild retention. This has a
19 success fee in it. It's subject to the
20 45-day rule here in the Southern
21 District and it will therefore be heard
22 for a final hearing at the November 29th
23 omnibus hearing.

24 THE COURT: Right.

25 MR. BUTLER: Your Honor, now

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2 I'm moving on to the matters that we
3 believe were uncontested, agreed or
4 otherwise resolved. The first matter is
5 item number 12. This deals with
6 insurance financing. It's our motion
7 seeking authority to continue honoring
8 pre-petition insurance premium finance
9 agreements and related matters. Your
10 Honor, we request our authorization from
11 the Court to continue to honor our
12 obligations to an entity called
13 Chamomile, Inc., pursuant to a pre-
14 petition insurance premium financing
15 agreement. We have reviewed the terms
16 of the agreement, have been provided
17 that the creditors' committee. Neither
18 the committee nor any other party, has
19 objected to the relief requested, unless
20 Your Honor has any other questions, we
21 rely on the papers.

22 THE COURT: No. I reviewed the
23 papers. Unless -- does anyone else want
24 to be heard on this matter? Hearing no
25 one, and based on my review of the

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2 motion, I'll approve it.

3 MR. BUTLER: Thank you. Your
4 Honor, the next matter, matter number
5 13, is our motion to assume the HSBC
6 purchase card and to continue to use the
7 purchase card agreement and travel card
8 agreement with HSBC Bank, USA National
9 Association. And Your Honor,
10 essentially we have, in this agreement,
11 asked to assume and take various actions
12 with respect to the agreement that we
13 use, to deal with about 1,080 of our
14 employees who use this as a purchase
15 card through our plant facilities in the
16 U.S. and elsewhere and about 12,500 of
17 our employees who use this card in the
18 ordinary course of the day's business in
19 connection with travel-related expenses.
20 Again, Your Honor, there's a variety of
21 relief sought in the motion with respect
22 to HSBC. Similarly, this matter has
23 been presented to the committee and
24 other parties. No one has filed an
25 objection. Unless Your Honor has any

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2 particular questions, we'd ask the -- we
3 have authority to assume we'd take the
4 actions outlined in the motion.

5 THE COURT: The debtors
6 couldn't get a replacement card?

7 MR. BUTLER: Your Honor, we
8 didn't seek to try to get a replacement
9 card here. The fact is that trying to
10 go through the process of taking all
11 these cards out, issuing all the other
12 cards, we actually, as I think we
13 explained to Your Honor on the first
14 day, we pre-funded a good portion of
15 this, on going into this, so I don't
16 believe, as of the -- while there was a
17 potential preference claim here, which
18 we've talked to the commit -- advised
19 the committee about, I don't think
20 there's anything owed, as of the
21 petition date --

22 THE COURT: Okay.

23 MR. BUTLER: -- the way in
24 which we structured this particular
25 transaction.

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2 THE COURT: All right. And
3 this is generally a -- these payments
4 are made generally by the debtors pretty
5 regularly?

6 MR. BUTLER: Yes, Your Honor.
7 They're paid on a monthly basis and some
8 of these are made directly and others of
9 them may be reimbursed through expense
10 agreements but they're all in the
11 process. This is basically used for two
12 purposes. For travel and in our plants
13 when people need -- and facilities --
14 people need to go out and get some de
15 minimis sort of asset, kind -- that's
16 how they go out and acquire them.

17 THE COURT: Okay. Does anyone
18 want to be heard on this motion? All
19 right. Based on my review of the motion
20 and Mr. Butler's comments and there
21 being no objections, I'll approve it.

22 MR. BUTLER: Thank you, Your
23 Honor. Your Honor, the next matter on
24 the agenda is matter number 14. This is
25 a motion seeking authority to reject

1 DELPHI CORPORATION
2 what we called a Pacific Rim lease and
3 in this motion, what we're trying to
4 accomplish -- we no longer need to use
5 the master lease agreement with Pacific
6 Rim, Inc. This is a master agreement,
7 which involved the lease of assorted
8 machinery, equipment, and other items,
9 and we no longer need to use these
10 items, particularly because of the
11 reasons set forth in the motion having
12 to do with our operations in Foley,
13 Alabama. Your Honor, as a result of the
14 debtor's exercise of its business
15 judgment, we have determined it's
16 appropriate to reject this lease at this
17 time. There have been no objections
18 filed, either by the lessor, by the
19 committee or any other party.

20 THE COURT: Okay. I reviewed
21 the motion and it appears to be well
22 within the debtor's business judgment,
23 so I'll approve it.

24 MR. BUTLER: Thank you, Your
25 Honor. Your Honor, matter number 15 on

1 DELPHI CORPORATION
2 the agenda is our motion for an order to
3 sell certain de minimis assets free and
4 clear of liens. It's essential -- and
5 to pay market rate broker commissions.
6 This is essentially a de minimis
7 procedures order that allows us to
8 operate in the ordinary course of
9 business with the disposition of de
10 minimis assets. There's a proposed
11 procedure here that would require that
12 we send notice in advance to the U.S.
13 Trustee, the unsecured creditors'
14 committee, the DIP lenders, any known
15 holder of a lien and the assets proposed
16 to be sold and any other known
17 interested party, with respect to the
18 particular asset involved. There's a
19 procedure that requires that if we don't
20 get a written objection or request for
21 additional time within five business
22 days, we can complete the transaction
23 and otherwise, if there is an objection
24 raised and we can't resolve it, we need
25 to come to court and deal with that

1 DELPHI CORPORATION
2 resolution. There is a purchase price
3 limitation here of greater than --
4 anything greater than ten million
5 dollars, it requires to come to court.
6 Given the company of our size, with our
7 asset base, we think that's an
8 appropriate level. We have agreed with
9 the creditors' committee. Our financial
10 advisors of the debtors and the
11 committee are working together on a
12 protocol so that the committee is
13 comfortable on how that ten million
14 dollars is analyzed. You know, Mr.
15 Rosenberg's used to me the example of,
16 you know, you've got a hundred million
17 dollar asset on the books at book value,
18 and you're going to get ten million
19 dollars for it. That's probably not the
20 kind of transaction that should be given
21 the test, or not.

22 THE COURT: Test or not.
23 Actually, I put in here 'cause the ten
24 million only works if it's an arm's-
25 length market driven sale, so I put in

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2 without further Court approval and I
3 added the words arm's-length sale and
4 then you and the committee can work it
5 out beyond that --

6 MR. BUTLER: -- Right.

7 THE COURT: -- but the debtor
8 has to be comfortable with an arm's-
9 length sale. That's separate, but from
10 it not being to insiders.

11 MR. BUTLER: Right. And Your
12 Honor on that point, we've agreed to
13 work out a protocol with our financial
14 advisors. I think we've had pretty good
15 success, even in the last week or ten
16 days, on -- the financial advisor are
17 working very closely together and they
18 have perfections for the debtors and the
19 committee working closely together. In
20 the unlikely event that we couldn't
21 agree on a protocol, I'd say to Mr.
22 Rosenberg he can come back to court
23 here, with respect to this order
24 subsequently. But I can't imagine that
25 would be the case.

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2 THE COURT: Okay. I had a
3 couple of other comments on this. Maybe
4 I should give you those before I hear
5 from anyone. In paragraph 4, I think
6 the broker's affidavit should include an
7 affirmation by the broker that the
8 commission is at or lower than, in his
9 or her reasonable belief, market
10 commissions for similar sales. And
11 then, paragraph C, which is the
12 paragraph that gives a right to come.
13 Paragraph C is a paragraph that lets
14 people go to court, if they -- if you
15 cannot resolve an objection. I just
16 want to make it clear that the broker
17 would be retained nunc pro tunc, given
18 the rules in this circuit. There
19 shouldn't be any concern on the broker's
20 part about that. And then, lastly, on
21 paragraph 6, which is the paragraph that
22 says that the NATO's procedures shall
23 not apply to sales of assets that
24 involve an insider, I also added this
25 concept and you can -- if you're not

1 DELPHI CORPORATION
2 comfortable with the language, you can
3 adjust it, but what I had in mind was,
4 or any sale that because of the integral
5 nature of the asset would require the
6 debtor subsequently to sell additional
7 assets for an aggregate sum in excess of
8 ten million. And that wouldn't be
9 covered by this either. You'd have to
10 go to court for that.

11 MR. BUTLER: I understand that,
12 Your Honor. And, I should point out we
13 also agreed to give counsel of the
14 debtors pre-petition credit facility
15 notice of these transactions.

16 THE COURT: Right. Okay. So
17 does anyone else -- does anyone want to
18 be heard on this motion?

19 MR. ROSENBERG: Your Honor,
20 only to say that we were troubled by the
21 ten million dollar number for the reason
22 Mr. Butler said, but I will report that
23 I think that FTI, the debtors' financial
24 advisor, and Mezero, the committee's
25 financial advisor, have already

1 DELPHI CORPORATION
2 established an excellent working
3 relationship and I have every
4 anticipation that we will be able to
5 work through what ten million dollars
6 really should mean, particularly in the
7 context of Your Honor's comments.

8 THE COURT: Okay. And again,
9 if for some reason, the committee or the
10 banks or anyone else feels this program
11 isn't working as it was intended, then
12 you can come back to court and seek
13 modification of the order.

14 MR. ROSENBERG: Very good, sir.
15 Thank you

16 THE COURT: Okay. But with
17 those changes in caveats, I'll approve
18 it.

19 MR. BUTLER: Thank you, Your
20 Honor. Item number 16 on the agenda is
21 a utilities motion. This is our -- the
22 final hearing on our motion for an
23 interim final order under section 366 to
24 deal with putting in essentially
25 alternative dispute resolution

1 DELPHI CORPORATION
2 procedures to deal with utility
3 deposits, perhaps the last of this kind
4 drafted this way, that Your Honor will
5 be hearing, given the changes in the new
6 code. I think it will be, as I had
7 mentioned at the first day hearings, I
8 think there will be a slightly evolved
9 version of these procedures that will
10 come back even under the new statute.
11 But as to these matters, we have
12 alternative dispute resolution process
13 here, that essentially tries to work out
14 the deposit issue between the utility
15 and the company and sort of vet the
16 adequate assurance issues prior to
17 coming to court. There were very few
18 objectors to that relief. We did serve
19 this as required by Your Honor. There
20 were very few objectors that overall --
21 that filed an objection. And with
22 respect to those objectors, we were able
23 to resolve one or two of the objections,
24 and more importantly, all the other
25 objectors agreed that they wanted to

1 DELPHI CORPORATION
2 continue to work on this with the
3 debtors and asked that -- and agreed
4 that the order could enter on a final
5 basis as to all others but them, and we
6 would continue to work with them and
7 deal with them on November 29th, if we
8 can't come to a satisfactory resolution.
9 The form of black-lined order we
10 submitted, Your Honor, reflects that
11 agreement.

12 THE COURT: Okay. I had a
13 couple of changes to this one also,
14 consistent with how I've done these.
15 And I know that different courts have
16 different procedures for this type of
17 motion. They basically had to do with
18 the provision that you have in here in
19 paragraphs 6 and in paragraph 9, which I
20 think works for an interim order but not
21 for a final order. The provision says
22 that unless the utility makes a request
23 within 25 days of the receipt of this
24 order, they can't make any other
25 requests. And since I think the statute

1 DELPHI CORPORATION
2 contemplates changed circumstances and
3 the utilities rights in a lot of changed
4 circumstances, I changed that in the
5 third line. So, instead of saying
6 within 25 days of the date of service,
7 hereof request deadline, I just said and
8 based on materially changed
9 circumstances on the date hereof. A
10 similar concept is baked into paragraph
11 9 for the utilities that you discover in
12 the future that you might have had that
13 didn't get notice of this --

14 MR. BUTLER: Yes, sir.

15 THE COURT: -- And, it again,
16 consistent with that case log on this
17 pre-October 17th and this circuit, this
18 order provides that the utility
19 companies can't unilaterally terminate
20 service, even the ones that you discover
21 in the future, unless there's a court
22 order. But I think they should be free
23 to come in to ask for that type of
24 relief. The other change is in
25 paragraph 7, it gives the debtors 45

1 DELPHI CORPORATION
2 days to set up a determination hearing.
3 And I've just added, consistent with the
4 Court's Case Management Order, the
5 utility company may seek an earlier
6 hearing. In all likelihood, it probably
7 would be within that time frame anyway,
8 but if there's some emergency, they
9 could do that. But, seeing no
10 objections in hearing, I'm going to
11 approve it on that basis.

12 MR. BUTLER: We'll make those
13 changes, Your Honor, and submit the
14 order. Thank you.

15 THE COURT: Okay.

16 MR. BUTLER: Your Honor, the
17 next matter on the agenda is matter
18 number 17. This is a motion for an
19 order authorizing the rejection of a
20 license agreement with DuraSwitch
21 Industries, Inc. Again, Your Honor,
22 another rejection motion dealing with,
23 in this case, a license agreement that
24 was entered into in April of 2000. It
25 was an exclusive license agreement for

1 DELPHI CORPORATION
2 technology that facilitated electrical
3 connections within a vehicle, and rather
4 than go through a litany of what's in
5 the motion or in a presentation, Your
6 Honor, the basic punch line in this one
7 is that we and counsel for DuraSwitch
8 have agreed on agreed form of rejection
9 order, and we have submitted it to the
10 Court.

11 THE COURT: Okay. I reviewed
12 the motion and it's clearly within the
13 debtors' business judgment and also the
14 revised order, which looks fine.

15 MR. BUTLER: Thank you.

16 THE COURT: Does anybody want
17 to be heard on this? All right, hearing
18 no one, I'll approve it for the reasons
19 stated in the motion.

20 MR. BUTLER: Thank you, Your
21 Honor. Your Honor, the next matter on
22 the agenda is the final hearing on our
23 cash management motion. There were two
24 objections that were filed. Both of
25 them, perhaps it shouldn't be surprising

1 DELPHI CORPORATION
2 to any of us, dealt with the same thing
3 we talked about at the interim hearing,
4 which was that pesky paragraph dealing
5 with what should happen in the event
6 that in intercompany transfers there was
7 a net borrower and a net lender and what
8 the relationship should be between the
9 two entities within the debtor's system.
10 Your Honor may recall that the subject,
11 the discussion, and the debate at the
12 first hearing had to do with whether
13 that -- there should be a prior --
14 administrative claim and what priority
15 it ought to have, be it super-
16 administrative, super-priority or
17 others. That has evolved, now, into the
18 view that there actually -- it shouldn't
19 be just a claim, it should be a lien.
20 And we have actually entered into an
21 agreement with the Pension Benefit
22 Guaranty Corporation as to the language
23 that's in the order that's acceptable to
24 them. It is a lien. They're the entity
25 that has a control group liability claim

1 DELPHI CORPORATION
2 against all those entities and the
3 priority of that lien is determined by
4 the DIP financing order. The creditors'
5 committee has reserved or objected on
6 the issue. I think it was actually a
7 statement that was submitted, so I'll
8 call reserve for the moment, but have
9 raised an issue as to whether that lien
10 ought to have a higher priority. They
11 would prefer the priority be right below
12 the DIP lenders and the DIP financing
13 order calls for that priority to be
14 juniored to various categories of
15 claimants, the DIP lenders, the pre-
16 petition lenders and the setoff
17 claimants. That is the only issue I
18 think that exists with respect to the
19 cash management order that I'm aware of.
20 And the -- and my suggestion would be,
21 Your Honor, that we -- the Court reserve
22 on that matter until you hear the DIP
23 financing motion. Because I think,
24 ultimately, Your Honor's going to be
25 dealing with the DIP financing issues

1 DELPHI CORPORATION

2 and depending on how you come out on
3 those I think Mr. Rosenberg and I will
4 be able to work this one out.

5 MR. ROSENBERG: Yeah.

6 THE COURT: Okay.

7 MR. ROSENBERG: Your Honor, I
8 have no problem as far as Mr. Butler
9 goes. Obviously, the two have to be
10 consistent in terms of the priority of
11 the liens and I will argue passionately
12 for that priority --

13 THE COURT: Okay.

14 MR. ROSENBERG: -- at the
15 appropriate time. We did raise another
16 issue, however, in our statement, which
17 was that a lien is only as good as the
18 assets and cash flow backing it up. And
19 we do want and need a mechanism to
20 assure that however it is secured, it
21 can be repaid. I would hope that we
22 could do that via some kind of a
23 protocol, but it is not the case that if
24 Your Honor simply grants a lien, we go
25 away happy.

1 DELPHI CORPORATION
2 THE COURT: Right. I actually
3 had the same concern and it comes up in
4 the cash management contacts, but
5 there's some point where intercompany
6 transfers really do turn into serious
7 lending decisions. Maybe that never
8 happens in this case because everything
9 balances out, but there should be a
10 process whereby the appropriate
11 professionals for the committee are kept
12 up to speed on both net balances and I
13 guess, also, you know, the same type of
14 information that a board would consider
15 in continuing to authorize its debtor to
16 extend credit to another debtor. That
17 is, I guess, the financial payoff of the
18 other debtor. I expect that such an
19 analytical process will be undertaken by
20 each credit provider anyway, so I'd hope
21 that, and expect, really, that whether
22 it's the committee's financial advisor
23 or counsel would be kept informed of
24 those decisions on, you know, a
25 reasonably current basis, like every

1 DELPHI CORPORATION
2 month or maybe even every two weeks.
3 And if there's any -- in particular,
4 what I have in mind is any large
5 increase in exposure by another company
6 lender or substantial decline in the
7 fortunes of an intercompany borrower
8 that it would raise a red flag about
9 lending.

10 MR. BUTLER: Your Honor, on
11 that point I agree with Mr. Rosenberg.
12 I don't view this protocol as being a
13 difficult one for us to resolve. We
14 contemplate this being part of the
15 monthly reporting package to the
16 committee. Your Honor should know we
17 already established between us a
18 consensual schedule of meetings that, at
19 the moment, go out all the way till next
20 March. In terms of dates, we're meeting
21 every month as a full group of debtors
22 and committee representatives and we'll
23 make sure this is part of the monthly
24 reporting package.

25 THE COURT: Okay. But -- I'm

1 DELPHI CORPORATION
2 serious about this. I don't think there
3 should be a sort of an automatic yes by
4 a particular debtor's management, which
5 overlaps obviously to a borrowing
6 request. I mean, this is not just
7 simply, we need, you know, ten million
8 dollars. Okay, here it is. There needs
9 to be some analysis of the ability to
10 repay that.

11 MR. BUTLER: Right. Well, Your
12 Honor, I think tempered with that is the
13 fact that, you know, these are -- as you
14 look at these inner companies, the vast
15 majority of them are wholly owned. And
16 the benefit of that enterprise inures to
17 the overall benefit of the business.

18 THE COURT: Well, that's
19 another -- you know, it depends on who
20 the creditors are. If --

21 MR. BUTLER: Right.

22 THE COURT: If there's a lot of
23 overlapping debt, than maybe it's not
24 much of an issue. --

25 MR. BUTLER: Yeah. And in

1 DELPHI CORPORATION
2 fact, Your Honor, well, this is for
3 another day, but the reality is the
4 majority -- we'll eventually get to a
5 point in this case where we'll look at
6 where all the debt is -- The majority of
7 the debt, say the liens that attach from
8 the banks, and now some of the
9 replacement liens granted in the
10 proposed financing order, and the PBGC's
11 position. The majority of the other
12 debt of the company is not at these
13 entities.

14 THE COURT: Well --

15 MR. BUTLER: That will be for
16 another day, but --

17 THE COURT: -- that should make
18 the protocol easier. I mean, there's no
19 reason the committee needs to get into
20 this in a great deal of detail if, in
21 fact, no creditors are even potentially
22 hurt by a loan from one company to
23 another.

24 MR. BUTLER: All right.

25 THE COURT: So let's reserve on

1 DELPHI CORPORATION

2 the lien priority issue till the
3 discussion of the debt -- the language
4 is the same in both orders, right?

5 MR. BUTLER: Yes, Your Honor.

6 MR. SOMERSTEIN: Yes, Your
7 Honor. Good morning, Your Honor.

8 MR. ROSENBERG: Only objections
9 to it.

10 MR. SOMERSTEIN: Good morning,
11 Your Honor. Mark Somerstein, Kelly Drye
12 for Pension Benefit Guaranty
13 Corporation. Your Honor, I would just
14 note that PBGC is not a member of the
15 creditors' committee and we'd appreciate
16 the opportunity to participate with Mr.
17 Butler and his team, and Mr. Rosenberg
18 and his team, in reviewing the protocol
19 so that we could see the information on
20 the intercompany borrowings.

21 THE COURT: Okay.

22 MR. SOMERSTEIN: I'm sure
23 that's something we can --

24 THE COURT: -- well, maybe --
25 again, I would just urge you to focus in

1 DELPHI CORPORATION

2 on the borrowers that are of concern to
3 your client.

4 MR. BUTLER: Your Honor,
5 although, I know the PBGC and we're
6 actually, at some point, we'll weigh in
7 on that. We've been working with the
8 PBGC in terms of their efforts to seek
9 membership on the committee. But we
10 don't want to get in position of saying,
11 what the committee gets to do, other
12 people get to do.

13 THE COURT: Well, I agree with
14 that --

15 MR. BUTLER: We're not asking
16 --

17 THE COURT: -- but I think this
18 is a specific issue that we all know the
19 PBGC is focused on, besides the
20 committee. And, if it can be done in a
21 way that really focuses in on their
22 obligors in an efficient way, then I
23 think you can do that.

24 MR. SOMERSTEIN: That's exactly
25 what we're talking about, Your Honor.

1 DELPHI CORPORATION

2 Thank you.

3 THE COURT: Okay.

4 MR. BUTLER: Your Honor, that
5 brings us to the only other matter on
6 the agenda, matter 19, which is the DIP
7 financing hearing, which is contested.

8 Your Honor, we'd like to ask for a brief
9 recess so that we can set up for the
10 hearing and try to resolve a few
11 additional issues. You know, no more
12 than 30 minutes, hopefully less.

13 THE COURT: Okay. So why don't
14 I come back here at 11:30?

15 MR. BUTLER: Thank you, Your
16 Honor.

17 THE COURT: Okay.

18 (Recess at 11:04 a.m.)

19 THE COURT: Please be seated.
20 Okay, we're back on the record in Delphi
21 Corporation.

22 MR. BUTLER: Your Honor, thank
23 you for allowing us to take an extended
24 lunch recess. I hope the Court will
25 believe it was constructive. The

1 DELPHI CORPORATION
2 debtors certainly believe it was with
3 the help of a number of principal stake
4 holders, we've been able to resolve a
5 number of the objections to the DIP
6 financing motion, which is the next
7 matter on the agenda. That's matter
8 number 19 on the agenda and our last
9 matter for today. And the resolution
10 was also resolved, matter 18, cash
11 management motion that has been
12 reserved.

13 THE COURT: Okay.

14 MR. BUTLER: Your Honor, what
15 I'd like to do is reorganize the hearing
16 slightly and report to the Court on a
17 number of the settlements, and then move
18 to an abbreviated evidentiary record.

19 THE COURT: Uh-huh.

20 MR. BUTLER: I believe we
21 resolved all the objections that went to
22 the issues as to whether there should be
23 a DIP financing put in place. I think
24 we have addressed, by the majority of
25 objections that would like adequate

1 DELPHI CORPORATION

2 protection. I believe that some of the
3 setoff claimants may still raise issues
4 and I believe Bank of America may raise
5 certain issues. Those issues, I don't
6 believe, based on review of the
7 objections go to the heart of whether or
8 not we've complied with 364(d) on those
9 kind of issues. So what I propose to do
10 is to describe, in general terms, the
11 settlements that had been reached, so
12 that everyone is informed. I also am
13 able to answer any questions the Court
14 has and then move to an evidentiary
15 record the admission of exhibits and
16 proffer it for the Court. We have the
17 witnesses available, but I don't know,
18 unless Your Honor wants us to get live
19 testimony, whether anyone else will seek
20 it.

21 THE COURT: Okay. Well, I take
22 in proper and then, obviously, if
23 someone wants to cross-examine them,
24 they can do that.

25 MR. BUTLER: Your Honor, this

1 DELPHI CORPORATION
2 is, as the Court knows, a motion that we
3 had filed. This is the final hearing
4 before the Court on approval about 40
5 would obtain and move forward on 2
6 billion dollars of committed DIP
7 financing from JP Morgan Chase Bank NA
8 as administrative agent and CitiCorp USA
9 as syndication agent. Along with a
10 group of other financial institutions
11 that have been arranged by JP Morgan
12 Securities Inc. and CitiGroup Global
13 Markets Inc. The DIP facility is before
14 the Court today includes both a 259
15 dollar term loan and a 1.7 billion
16 dollar revolver. There's a sub-limit,
17 as I advised the Court at the interim
18 hearing, about 325 million dollars for
19 letters of credit and under the terms of
20 this financing, it would prime
21 approximately 2.59 billion dollars worth
22 of pre-petition revolver and term loan
23 facilities under the terms of the order.
24 And we also have dealt with, in this
25 order, how setoff and related rights,

1 DELPHI CORPORATION
2 including recoupment issues, would be
3 addressed going forward in this case in
4 an orderly manner. It is the company's
5 view, Your Honor, that we have hit what
6 we believe to be a very complex set of
7 issues what I'll call the sweet spot of
8 an order that balances the interest of
9 all parties here in an orderly manner
10 and allows the company to move forward
11 in these cases. Your Honor, there was
12 only one objection that was filed, and I
13 should point out -- to begin with, Your
14 Honor, I'll move the admission of these
15 exhibits at the evidentiary portion of
16 this book could be used for the next
17 references now. Could I present an
18 exhibit book to the Court?

19 THE COURT: Sure.

20 MR. BUTLER: Your Honor, the
21 transaction that we're asking the Court
22 to approve is a transaction that is
23 evidenced by several documents and they
24 are marked as Debtors' 1, 2 and 3. A
25 commitment letter, a post-petition DIP

1 DELPHI CORPORATION
2 financing agreement, which is Exhibit 2
3 and Exhibit 2a, which is a first
4 amendment to the revolving credit term
5 loan and guarantee agreement, which
6 includes an agreement as to the
7 borrowing base element of this
8 transaction. We have also filed with
9 the Court a proposed financing order
10 which has been black-lined on several
11 occasions and which we will suggest some
12 other changes to, in this hearing. But
13 the current form of that order in terms
14 of black-line is at Exhibit 4. That's
15 the black-line which represents the
16 current state of the order, subject to
17 the comments that we made on this
18 record.

19 THE COURT: Are those documents
20 the same as the ones provided my
21 chambers, I guess, last night?

22 MR. BUTLER: Yes, Your Honor.
23 There was a proposed order attached to
24 the original motion that was updated
25 with a final financial order that was

1 DELPHI CORPORATION
2 filed with an omnibus reply. It was an
3 exhibit of the omnibus reply; it was
4 black-lined against the Court's interim
5 order. We then had further negotiations
6 and late last evening we reached
7 agreement with the post-petition
8 lenders, the pre-petition agent, General
9 Motors Corporation and the company about
10 the form of order. We black-lined that
11 and we served it out last night, or
12 overnight. We now have held the Court
13 we put it out on the docket, we put it
14 out on the website and we served all the
15 parties with it, overnight.

16 THE COURT: Okay.

17 MR. BUTLER: There'll be some
18 changes to that order today, although
19 they are relatively discreet, to resolve
20 some of the issues that we have before
21 the Court. So that the documents we're
22 asking Your Honor to approve would be
23 the loan agreements on 2 and 2a and the
24 financing order as we make changes on
25 the record today.

1 DELPHI CORPORATION

2 THE COURT: And there are
3 agreements that reflect the amendments
4 that went out last night, too.

5 MR. BUTLER: Yeah, Your Honor.

6 The loan agreements didn't really need
7 much in the way of changing. There were
8 issues more about priorities and
9 relationships than anything else.

10 THE COURT: Okay.

11 MR. BUTLER: Your Honor, also,
12 Exhibit 28 and 29 to -- Debtors' 28 and
13 29 set forth a summary of all the
14 objections that were filed as of 12 noon
15 yesterday and the debtors' views on
16 those. Those actually -- Exhibit 28,
17 Debtors' Exhibit 28, is actually -- was
18 also Exhibit B on omnibus reply and
19 Debtors' 29 was Exhibit C to our omnibus
20 reply, which basically laid out the
21 objections that had been, from the
22 debtors' perspective, timely filed and
23 some others that had not been timely
24 filed, but which we were aware of prior
25 to the 12 noon deadline. We had the

1 DELPHI CORPORATION
2 chambers to submit our omnibus reply.
3 Of all the objections listed in Debtors'
4 28 and 29, I believe the only objection
5 that went to the issue solely of whether
6 or not the debtors could enter into this
7 priming facility was the objection filed
8 by the self-styled ad hoc committee of
9 pre-petition lenders. The group we
10 refer to as the Goodwin Proctor Group,
11 represented by Mr. Brilliant and his
12 colleagues, which had filed objections
13 really alleging, essentially, that the
14 company couldn't sustain its burden on
15 Section 364 of the Bankruptcy Code and
16 further, even if could, that the company
17 hadn't offered adequate protection. In
18 connection with that transaction -- with
19 those objections, we also filed a reply
20 and there are a couple of items and some
21 changed circumstances that I want to
22 reflect on this record so the record
23 here is complete. In connection with
24 that transaction, and that is the DIP
25 lending loan with the priming position,

1 DELPHI CORPORATION
2 with respect to the 2.59 billion dollars
3 of pre-petition debt, there was a notice
4 -- there was a position that the pre-
5 petition agent took and that was
6 communicated to all of the members of
7 the pre-petition bank group, and the
8 members of the pre-petition bank group
9 then took votes on two discreet elements
10 which are relevant to today and perhaps
11 relevant to the case. And, the notice
12 that the pre-petition agent sent out is
13 Debtors' 22, which is the actual notice
14 in which the debtor -- the approached
15 agent took two positions. First it had
16 taken a posititing that, absent
17 instruction to the contrary, it was not
18 going to object to the debtors' request
19 to enter into this transaction, and it
20 asked the members of the group to give a
21 reflect on that. Second, it had told
22 the group that it intended to inform the
23 debtors that the debtors would not be
24 able to renew live or based interest
25 contract arrangements as they expired.

1 DELPHI CORPORATION

2 I believe, beginning on or around
3 November 15th of this year, and also
4 sought direction from the lenders on
5 those issues. With respect to the first
6 matter, there were 42.88 percent of the
7 members --

8 THE COURT: I'm going to
9 interrupt for just a second. Please
10 turn off your Blackberries. Anytime
11 that sound -- sounds like a little bee
12 buzzing, the transcript gets interrupted
13 by your Blackberries. Okay, you can go
14 ahead Mr. Butler.

15 MR. BUTLER: Okay. Your Honor,
16 in that vote that was taken, 42.88
17 percent of the holders of the pre-
18 petition debt affirmatively agreed with
19 the position of the pre-petition agent
20 not to object to this transaction.
21 Approximately 14 percent of the holders
22 objected and directed the agent to
23 object to this transaction. And
24 approximately somewhere in the
25 neighborhood of 33 percent did not vote,

1 DELPHI CORPORATION
2 but under the terms of the solicitation
3 from the agent were deemed to have
4 consented to the agent's approach; not
5 consenting to the priming but to the
6 actions to be contemplated by the agent.
7 Which meant that, essentially, about 86
8 percent of the bank group concurred or
9 deemed with concurred with the agent's
10 decision not to object to this
11 transaction. However, with respect to
12 the issue of ABR, and this is different
13 than it was reflected in our papers
14 because we had different information and
15 it was incorrect, and I want the record
16 to be correct. Fifty-six percent of the
17 members of the bank group concurred with
18 the agent's determination to no longer
19 permit LIBOR agreements, LIBOR based
20 interest rate agreements with the
21 debtors, and the balance did not vote
22 but were deemed to have concurred under
23 the terms of the solicitation. So
24 essentially, at least this follows,
25 insofar as the pre-petition agent was

1 DELPHI CORPORATION
2 concerned, there was consensus among the
3 bank group that the agent would inform
4 the debtors that when a LIBOR-based
5 contract expires, on or about November
6 15th, they would not seek to renew them.
7 Now, the debtors' position is that that
8 action may or may not be enforceable
9 under the terms of that agreement. And
10 given the fact that we're in chapter 11,
11 at the moment, and therein obviously
12 lies one of issues that ultimately may
13 need to be determined by this Court.
14 But it is, I think, a significant
15 materially changed fact from the state
16 of the papers before the Court, that
17 there was unanimous consensus, at least
18 deemed consensus among the pre-petition
19 holders to move to an ABR rate. Now the
20 ABR rate, Your Honor, the difference
21 between the two rates is about 160 basis
22 points, it's about 37 and a half million
23 dollars a year on an annualized basis,
24 something along the ways in additional
25 interest costs. And that would be the

1 DELPHI CORPORATION
2 contract rate interest. And, Your
3 Honor, those items are discussed in some
4 detail in Debtors' 17, 18 and 19, in
5 terms of the exhibits that are before
6 the Court, about how those particular
7 transactions work. In addition, there
8 are other claims under the pre-petition
9 loan agreement that could, according to
10 some holders of the pre-petition debt,
11 be claimed for both default interest and
12 incremental 200 basis points and other
13 damages and costs or claims associated
14 with any prepayment or payment of the
15 term loan not in accordance with the
16 terms of that term loan, by the
17 prepayment premiums or call premiums or
18 damages or whatever the claims may be.
19 Essentially, what we have entered into
20 an agreement to do, which we understand
21 involves, in all respects, any objection
22 by Mr. Brilliant's clients to this
23 hearing, is we've agreed that the -- and
24 I'll read some language in a moment --
25 but essentially we've agreed that the

1 DELPHI CORPORATION
2 pre-petition agent can put up, what's
3 called interlinks, the internet-based
4 application in which it communicates
5 with its 250-odd plus lenders and
6 opportunity for any holder to waive its
7 claim on a permanent basis, to default
8 interest under the pre-petition
9 facility, and waive its claim under any
10 basis to any call premium, prepayment
11 premium, other kind of claim against the
12 company for the prepayment other than in
13 accordance with the contract of amounts
14 owed under the pre-petition instrument.
15 Any holder which waives those two claims
16 would then be entitled to receive the
17 ABR rate for the balance of this case.
18 Actually, for the balance of the time
19 the indebtedness is outstanding in
20 accordance with the terms of the loan
21 agreement. But the applicable rate paid
22 to that holder would be ABR as opposed
23 to LIBOR. If someone does not waive
24 those claims they would be paid, as
25 adequate protection, the LIBOR rate;

1 DELPHI CORPORATION
2 they would retain their rights to argue
3 that the differential accrued and we
4 would also fight about whatever other
5 claims they had including default
6 interest claims and other kinds of
7 compensatory claims at the end of the
8 case in the proof-of-claim process. And
9 that was the fundamental agreement
10 reached. We've also agreed, under the
11 terms of the adequate protections
12 package, to pay the reasonable expenses
13 the pre-petition agent and, through the
14 date of this hearing, only the
15 reasonable expenses incurred by Mr.
16 Brilliant's group in terms of the fees
17 and expenses of his firm.

18 THE COURT: In connection with
19 opposing the debt?

20 MR. BUTLER: Correct. But only
21 in connection with matter, only to the
22 date of this hearing.

23 MR. BRILLIANT: Your Honor, if
24 I may. Two minor issues, it's ABR plus
25 applicable margin and it's the fees of

1 DELPHI CORPORATION

2 my firm and we had hired, you know,
3 conflicts councils to serve some of the
4 subpoenas with respect to what we had a
5 conflict, and that's covered in the
6 order as well.

7 THE COURT: Okay.

8 MR. ROSENBERG: Mr. Butler, I
9 assume that we will get notice of the
10 fee request and then have a say in the
11 reasonableness involved?

12 MR. BUTLER: Absolutely.

13 MR. ROSENBERG: Thank you, sir.

14 THE COURT: Okay.

15 MR. BUTLER: The change to the
16 order occurs, Your Honor, on this pre-
17 report, and I want to be specific
18 because this was reviewed with a number
19 of the parties. The change in the order
20 here occurs in paragraph 12C. And if
21 the Court uses -- refers to Debtors' 4
22 and uses that black-line and it goes to
23 page 30, and this is the same black-line
24 that's been distributed to virtually
25 everyone in the courtroom, or people who

1 DELPHI CORPORATION
2 have, at least, access to it. It's also
3 posted on delphidocket.com for those
4 participating by telephone. If we go to
5 page 30 there's an insert that occurs in
6 Roman numeral III about eight/nine lines
7 down. There's a phrase and it says, and
8 letter of credit and other fees at the
9 non-default contract rate. Then there's
10 a word, applicable, between the word
11 rate and applicable there is the
12 following insertion. Including at the
13 option of the borrower the Euro dollar
14 rate plus the applicable margin. And
15 then on the next line where it says
16 provided back, and after the work back,
17 we insert the symbol X(x) because
18 there's going to be a Y in a moment.
19 And then we continue down just before
20 roman numeral IV and we add there a Y in
21 the hole and insert the following
22 statements. "Notwithstanding anything
23 to the contrary, in this order or the
24 pre-petition credit agreement, as to
25 each pre-petition secured lender which

1 DELPHI CORPORATION
2 executes and delivers a written consent
3 in the form to be provided by the pre-
4 petition agent(which consent shall be
5 informed and substance reasonably
6 satisfactory to the borrower), waiving
7 and releasing all claims, if any, in
8 respect of default interest. And any
9 claims related to the prepayment of the
10 pre-petition debt including any
11 prepayment premium under the pre-
12 petition credit agreement, interest
13 shall accrue and be paid by the borrower
14 on the first business day of each month
15 at ABR plus the applicable margin in
16 respect to the pre-petition loans held
17 by such pre-petition secured lender from
18 and after the labor of A, the expert
19 existing LIBOR contracts and B, the
20 delivery of such release and waiver."

21 THE COURT: Okay. Go ahead.

22 MR. BUTLER: And then on page
23 31, there is a statement that says, at
24 the end of paragraph C, before that at
25 paragraph sub D, it says, the debtor

1 DELPHI CORPORATION
2 shall pay the reasonable and documented
3 fees and expenses of counsel to the ad
4 hoc committee of pre-petition secured
5 lenders in connection with the motion
6 and we have an agreement as to a cap on
7 that, which we had discussed off the
8 record, Your Honor, with that group and
9 we'll obviously with other parties of
10 interest. And, you know, the reasonable
11 fees cannot exceed a capped amount.

12 THE COURT: And these are just
13 legal fees, right?

14 MR. BUTLER: Yes, Your Honor.

15 THE COURT: Okay.

16 MR. BUTLER: And then, Your
17 Honor, we would insert an insert there
18 that would also say, during dependency
19 of the Chapter 11 case, and accept as
20 otherwise set forth in a any confirmed
21 reorganization plan, the pre-petition
22 debt of any pre-petition secured lender
23 shall not be repaid or refinanced in
24 whole unless it is part of a transaction
25 in which the obligations under the DIP

1 DELPHI CORPORATION
2 credit agreement and the pre-petition
3 credit agreement are repaid or
4 refinanced in whole, or, if such pre-
5 petition secured lender consents to such
6 repayment.

7 THE COURT: Okay.

8 MR. BUTLER: Your Honor, that
9 represents the entire agreement between
10 Mr. Brilliant's clients and the debtors
11 and fully resolves their objection. I'd
12 like Mr. Brilliant to confirm that on
13 record.

14 THE COURT: Actually, before we
15 do that, and I apologize for
16 interrupting, if there is the LIBOR and
17 the debtor agrees that they won't object
18 to the interest that's being received
19 except if, for some reason, your total
20 won't be secured.

21 MR. BUTLER: Your Honor, what
22 we've agreed to is -- there are other
23 rights in lieu of the benefit of the
24 creditors' committee which have been
25 negotiated, which I'll get to in a few

1 DELPHI CORPORATION
2 minutes. But for example, payments
3 received under this order are subject to
4 recharacterization and we'll get to
5 that. You know, if under the
6 appropriate circumstances,
7 recharacterization is appropriate, that
8 right has been reserved and Mr.
9 Rosenberg will talk about it a little
10 bit later on.

11 THE COURT: The reason I'm
12 losing this is that in paragraph 16, on
13 38 and 39, in addition to the
14 reservation of rights for the committee,
15 the debtors reserve their rights to
16 argue the appropriateness of any
17 interest rate charged or claimed by the
18 pre-petition's secured lenders, and I'm
19 wondering whether you need to have
20 certain cross-reference now to this new
21 agreement, at least in respect to the
22 waivers, or not. I'm just raising that
23 for you.

24 MR. BUTLER: As always, Your
25 Honor, you're the best lawyer in the

1 DELPHI CORPORATION

2 courtroom and you're absolutely right.

3 The only recharacterization would be if
4 we were undersecured and otherwise there
5 would be no opportunity to challenge the
6 ABR plus applicable margin rate on a go
7 forward basis.

8 THE COURT: Well, I'm probably
9 a lot smarter than any king in charge,
10 but let's make sure Mr. Butler agrees
11 that once the waiver comes in you're not
12 going to be able to object.

13 MR. BUTLER: That's correct,
14 Your Honor. I was going to restate that
15 at the end of that statement.

16 THE COURT: So we probably have
17 to add some cross-reference then in,
18 paragraph 16.

19 MR. BUTLER: We'll make that
20 cross-reference, Your Honor.

21 THE COURT: Okay.

22 MR. BUTLER: Mr. Brilliant.

23 MR. BRILLIANT: Thank you, Your
24 Honor. Alan Brilliant for the Goodwin
25 Proctor Company, the ad hoc committee of

1 DELPHI CORPORATION

2 pre-petition secured lenders. Your
3 Honor, the agreement read into the
4 record by Mr. Butler accurately reflects
5 the agreement and upon approval of said
6 settlement by Your Honor, our committee
7 would withdraw our objection.

8 THE COURT: Okay.

9 MR. BRILLIANT: Your Honor, I
10 would also like to thank Your Honor and
11 your chambers for your accommodations
12 over the last week. It's obviously been
13 a very hectic week for you all, not just
14 this case, but other things and we
15 really appreciate your accommodating us
16 until findings hearing yesterday.

17 THE COURT: That's fine. And
18 speaking of accommodating, are the
19 people who got the trial subpoenas, have
20 they been released of that one?

21 MR. BRILLIANT: Yes, Your
22 Honor, when we reached the settlement
23 agreement we immediately released them.
24 Everybody was happy to go except for one
25 counsel, GE's counsel, who apparently

1 DELPHI CORPORATION
2 wants to leave open their right to seek,
3 you know, sanctions for the filing of
4 the subpoena. I believe your clerk has
5 given them, you know, a further date and
6 if we have to, we'll come back and
7 respond to it.

8 THE COURT: All right. Well, I
9 hope you don't have to deal with that.

10 MR. BUTLER: Your Honor, the
11 next item that I'd like to deal with is
12 the agreement that has been reached in
13 which a number of parties played a role
14 but it resolves, the objection of it
15 resolves is the objection of the
16 creditors' committee that was filed, or
17 the statement of the creditors'
18 committee, I should say, was filed. And
19 there's a package of information here
20 that I want to get out and I know Mr.
21 Rosenberg will help me if I get it
22 wrong. But I think I have the
23 understanding and Mr. Zimen's interests
24 were implicated and I think he will
25 address these as well. But the

1 DELPHI CORPORATION
2 agreements reached have been reached as
3 follows, and these agreements which will
4 be reflected in the order will result in
5 the withdrawal of the statement, or at
6 least the committee's agreement that the
7 order ought to be entered with these
8 changes. First, the DIP agent will
9 agree that it does not have the right to
10 waive the intercompany leaves that were
11 subject of the cash management order and
12 the subject that Your Honor talked
13 about, the subject of this order. There
14 was a suggestion in the order that they
15 had that right and that's being
16 modified. Second, that to the extent
17 that there's going to be a change in the
18 borrowing base or in the financial
19 covenants, we will give -- the debtors
20 will give reasonable advance notice to
21 the creditors' committee of those
22 events. And seeing as we provide the
23 information to them on a monthly basis,
24 I don't see that as a burden, Your
25 Honor.

1 DELPHI CORPORATION

2 THE COURT: Can I interrupt?

3 This is a suggestion, I don't know if
4 this actually is the case, but, the
5 carve-out could be affected by
6 modification to the borrowing base. At
7 least when I read it, is that possible?

8 MR. BUTLER: I don't believe it
9 is. I'll ask the counsel for the DIP
10 lenders whether they agree with that. I
11 don't think the carve-out can be changed
12 in any respect on account of the
13 borrowing base.

14 MS. O'DELL: Maureen O'Dell for
15 the DIP lenders. The borrowing base
16 typically just gives you the amount of
17 approved unpaid. I think that's the
18 only relationship between the two.

19 THE COURT: Okay. Thank you.

20 MS. O'DELL: The carve-out can
21 impact the borrowing base, but not vice
22 versa.

23 THE COURT: Okay. All right.

24 MR. BUTLER: Your Honor, the
25 next item is to the extent that the

1 DELPHI CORPORATION

2 debtors received notice from the DIP
3 lenders that there is a triggering event
4 in connection with a carve-out. We had
5 agreed to provide a copy of that written
6 notice immediately to the creditors'
7 committee council.

8 THE COURT: Okay.

9 MR. BUTLER: Fourth, Your
10 Honor, to the extent that there's a
11 triggering event of the carve-out and
12 that triggering event is later resolved
13 or waived so that there's not a
14 continuing event of default, the
15 agreement is that the carve-out would be
16 refreshed or would spring back to the
17 original amount Your Honor is
18 considering approval of today.

19 THE COURT: Okay.

20 MR. BUTLER: Your Honor, I'll
21 mention, also on the record, that there
22 was an inconsistency between the credit
23 agreement and the draft order with
24 respect to the carve-out language. The
25 credit agreement was correct; the order

1 DELPHI CORPORATION

2 was incorrect. There are a few words
3 that have to be modified in connection
4 with that, but it would be consistent
5 with the negotiated carve-out language
6 that's in the credit agreement.

7 THE COURT: Okay.

8 MR. BUTLER: Your Honor, the
9 next item goes to the investigatory
10 periods with respect to matters related
11 to the pre-petition lenders. Currently
12 all of the matters have, under the order
13 -- are proposed to have a 90-day window
14 which can be extended, I believe it's
15 for cause upon motion to the Court.
16 Some of those rights are going to be
17 carved out and put in separate buckets
18 and extended for 180 days, subject to
19 the same motion that can be filed to
20 extend for cause. And that would have
21 to do with the committee's review of any
22 causes of action and the releases the
23 debtors have given under these
24 agreements, under the order. And
25 second, the question as to the

1 DELPHI CORPORATION
2 oversecured status of the pre-petition
3 lenders.

4 THE COURT: And that will be in
5 180 days?

6 MR. BUTLER: That will be 180
7 days.

8 THE COURT: Plus the
9 opportunity to come to Court.

10 MR. BUTLER: Correct, Your
11 Honor.

12 THE COURT: Okay.

13 MR. BUTLER: Your Honor, there
14 are a few places in the order where, in
15 talking about adequate protection of the
16 pre-petition interest, the phrase --
17 we're going to correct it to make sure
18 it tracks the statute and refers to
19 value -- their interests in the
20 collateral. Your Honor, also in
21 connection with investigatory rights
22 being granted to the committee, the
23 parties would agreed, that the
24 committee, if they determine there was a
25 basis to file an action, they would have

1 DELPHI CORPORATION
2 agreed or deemed standing to do so. The
3 thought process behind there is the
4 debtors have already waived their
5 interest in that respect and therefore
6 it would futile to make demand on the
7 debtors to prosecute before and then
8 seek the Court's approval. So, they
9 would have agreed standing to file the
10 complaint before this Court.

11 THE COURT: All right. People
12 still have the right to say, once it's
13 filed, we don't need to pursue it on a
14 fast track, or anything like that?
15 Parties of interest still have the
16 opportunity though, to try and persuade
17 me that once it's filed, it doesn't have
18 to be pursued on a fast track or, you
19 know, the scheduling issues are
20 reserved, right?

21 MR. ROSENBERG: Certainly, Your
22 Honor.

23 THE COURT: Okay.

24 MR. BUTLER: Your Honor, the
25 next -- I hope I get this correct. The

1 DELPHI CORPORATION
2 next issue -- or the next agreement is a
3 bundling issue of rights that are either
4 waived or not waived vis-a-vis what the
5 committee wanted and the pre-petition
6 lenders want as part of the adequate
7 protection package. And they implicate
8 section 506(c), 507(b) and 55 -- excuse
9 me 506(c), section 551 of the code and
10 interest in the proceeds in avoidance
11 actions. The agreement would be that
12 the existing 506(c) waiver proposed in
13 the financing order will stand as
14 drafted. However, the creditors'
15 committee objection with respect to
16 section 551 would be sustained and they
17 would -- on that particular point. And
18 there would be an agreement in terms of
19 any interest the pre-petition lenders
20 would have in avoidance proceeds under
21 the terms -- or anyone else having to
22 file a 7(b) in the interest of avoidance
23 proceeds that the first thing that would
24 be paid in priority would be the
25 administrative costs of the estate in

1 DELPHI CORPORATION

2 generating that fund or those proceeds.

3 So there would be, before any kind of
4 intervening interests could occur, the
5 administrative costs would be paid
6 first.

7 THE COURT: So that's the super
8 duper.

9 MR. BUTLER: Someone described
10 it to me, Your Honor, this afternoon as
11 a 506(c) interest and 507(b). I'm not
12 quite sure that's the right answer.
13 And, I don't want to confuse the record,
14 but the idea is that's it's that basic
15 concept.

16 THE COURT: Okay. On that
17 general topic, I don't know if this was
18 omitted on purpose or inadvertently, but
19 the avoidance actions that are listed
20 don't include 553, the avoidance
21 provision for setoff rights. Is that
22 the improper setoffs? Was that
23 intentional or is that just a --

24 MR. BUTLER: I think that was a
25 drafting glitch, Your Honor. I'll

1 DELPHI CORPORATION

2 correct it.

3 THE COURT: So that should go
4 on that list then.

5 MR. BUTLER: Your Honor, I
6 believe that the statements that I had
7 made on the record reflect the
8 understandings between the debtors, the
9 pre-petition agent, the post-petition
10 agent and the creditors' committee on
11 these matters. And, if accepted and
12 approved in the final order to be
13 submitted, would result in the
14 creditors' committee deemed the
15 statement to have been withdrawn or
16 satisfied or however one wants to
17 characterize it. And I'll ask Mr.
18 Rosenberg to confirm that on the record
19 after making one additional statement.
20 And that is, if Your Honor is in the
21 position to grant the changes we set in
22 the record today, it is important to get
23 a final order in place and we'd like,
24 Your Honor, when we get to the end of
25 the this, sir, Your Honor is prepared to

1 DELPHI CORPORATION
2 grant this relief because we still have
3 a ways to go. We would like Your Honor
4 to be able to -- have Your Honor
5 indicate that the financings been
6 granted so we could issue the
7 appropriate press releases to see if we
8 can get there, but I think we would like
9 to submit the order tomorrow morning to
10 chambers, so that there's a number of
11 people, but at least the committee -- I
12 want the opportunity to make sure that
13 they got all the wording correctly.
14 We're not, by doing this, inviting
15 fifty-five or seven people to a drafting
16 session tonight. We've had a number of
17 those because our intention is to simply
18 conform the order to the agreements
19 placed on this record; not to redraft or
20 renegotiate it. And, Your Honor, our
21 request would be that to the extent
22 there was any disagreement about that,
23 by any party, we would come back for
24 purposes of settling the order, not in
25 terms of revisiting the substance of the

1 DELPHI CORPORATION

2 approval of the transaction, if we get
3 there.

4 THE COURT: Uh-huh. Okay.

5 MR. BUTLER: Mr. Rosenberg.

6 THE COURT: Before he -- or
7 maybe he'll raise this, but -- am I
8 right then that the resolution on the
9 borrowing base point which was just
10 limited to recruiting, does that mean
11 that other material modifications of the
12 debt do come back for Court approval?
13 That was an issue I think the committee
14 raised and I understood the bank's point
15 about the borrowing base, but if you're
16 going to change anything else
17 materially, you come back here?

18 MR. BUTLER: Your Honor, if we
19 were making any material change in the
20 negative covenants, the financial
21 covenants, or those issues that we
22 didn't have the consent of the
23 committee, I think we would come back
24 here. If there's an agreement between
25 the two parties, you know, unless we

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2 thought -- you've asked us in the
3 beginning of this case to use our
4 judgment of what we think you'd want to
5 hear about. And, if either of us
6 thought that was the case, we, of course
7 would bring it back to a monthly omnibus
8 hearing.

9 THE COURT: And I understand
10 there's the point about successful
11 syndication, or maybe things were
12 changed there in connection with the
13 syndication, but --

14 MR. BUTLER: But that's part of
15 the approved flex arrangement, Your
16 Honor, in any event.

17 THE COURT: Right.

18 MR. BUTLER: And, we would not
19 come back to Court for that.

20 THE COURT: Right.

21 MR. BUTLER: Your Honor, one
22 clarification. One of the agreements I
23 mentioned the word negative covenants, I
24 should strike that, that was not the
25 arrangement with the DIP lenders and the

1 DELPHI CORPORATION

2 committee agrees with that, it was the
3 financial covenants that were implicated
4 there, I just want to make sure the
5 record's clear.

6 THE COURT: All right. That's
7 fine. I think you may need to do
8 something on page 3, roman numeral II
9 just to -- I'm sorry, page 13 not pages
10 3. Page 13 roman numeral II dealing
11 with that issues. I think it's
12 beginning to look, now, a little
13 different than what's been stated on the
14 record.

15 MR. BUTLER: Your Honor, I
16 should also point out that the agree --
17 we'll make that change. I really want
18 to point out on the record is -- Your
19 Honor, is that in consideration for this
20 package the committee has agreed that
21 the priority for intercompany claims and
22 liens that are set forth in the cash
23 management order that was submitted and
24 in the DIP proposed financing order are
25 no longer objectionable to the

1 DELPHI CORPORATION

2 committee.

3 THE COURT: So what I'm hearing
4 is, it's fine for both orders, then.

5 MR. BUTLER: Correct. The
6 language was negotiated with the Pension
7 Benefit Guaranty Corporation is now
8 acceptable to the committee.

9 THE COURT: Okay.

10 MR. BUTLER: Your Honor, I
11 believe that --

12 THE COURT: Just a second.
13 This statement confirmed, and it was
14 confirmed on the record that despite the
15 recital about being a web secured, these
16 payments themselves that were made are
17 subject to recharacterization to the
18 extent that 506(b) would require the new
19 DIP expose of the interest.

20 MR. BUTLER: That is correct.

21 THE COURT: Okay. I think
22 that's particularly valuable on page 15,
23 which is the mechanism you worked out
24 for pleading down of the principal on
25 the pre-petition debt. You have asset

1 DELPHI CORPORATION
2 sales. I think at the end of that first
3 full paragraph that's claiming company
4 shifting, you should have a proviso that
5 provided further that such prepayments
6 should have been laid over to the extent
7 that such loans are not secured claims
8 on under Section 506(b) of the
9 Bankruptcy Code.

10 MR. ZIMEN: Your Honor, can I
11 be heard on the point?

12 THE COURT: Sure.

13 MR. ZIMEN: Ken Zimen, Simpson
14 Thacher and Bartlett on behalf of JP
15 Morgan Chase Bank as pre-petition agent.
16 The language Your Honor focused on is
17 actually a prepayment of the DIP --

18 THE COURT: Oh, that's the DIP?

19 MR. ZIMEN: The resolution of
20 this issue that was an issue that was
21 raised with the debtors to provide
22 greater protection for the holders of
23 pre-petition secured claims was to
24 either require one of two things. After
25 125 million dollar basket, the debtors

1 DELPHI CORPORATION
2 can use massive sale proceeds to take
3 two thirds of the excess and to apply
4 that either to reduce the DIP
5 permanently, thereby reducing the
6 priming, or to hold as cash collateral
7 for the benefit not only the DIP
8 lenders, but the pre-petition lenders
9 and also the setoff claimants.

10 THE COURT: All right. So what
11 -- that's fine.

12 MR. ZIMEN: And I'll also point
13 out for Your Honor on page 31 of the
14 version you're looking at in the last
15 sentence of C, before the insert Mr.
16 Butler read, there's language there
17 preserving the rights of parties in
18 interest providing the characterization
19 point -- for the recharacterization
20 point.

21 THE COURT: Right, Okay. All
22 right. The last part on, I think, this
23 basket of issues, is again on the
24 debtors' reservation of Roy Iksind,
25 paragraph 16. If I read the pleading's

1 DELPHI CORPORATION

2 writing, if I heard the version right
3 today, the debtors are reserving, on the
4 interest that we talked about. You need
5 to object different if it's claimed
6 outside of the lenders' scenario.

7 (indiscerible) have a right to object to
8 these and expenses asserted by someone
9 other than the agent.

10 MR. ZIMEN: Yes, Your Honor.

11 THE COURT: And I think it's
12 only at this -- this discovered
13 interest.

14 MR. ZIMEN: I thought Ray Uppet
15 dealt with what allowed this.

16 Certainly, Your Honor, that is correct.

17 THE COURT: You should take a
18 look at that because I think, both on
19 page 38 and 39, at least, it seems to
20 just cover the interest rate.

21 MR. ZIMEN: We'll revise that,
22 your Honor.

23 THE COURT: Okay.

24 MR. BUTLER: Your Honor, then
25 with those statements, I'd like Mr.

1 DELPHI CORPORATION

2 Rosenberg to confirm that we have
3 satisfied the requirements of the
4 creditors' committee with respect to
5 this motion.

6 MR. ROSENBERG: Your Honor, I'm
7 pleased to report that we have. Our own
8 objections have been satisfied with a
9 reasonable compromise here. And, given
10 where we came out including such issues,
11 in particular, as the preservation of
12 the right to seek recharacterization
13 which had not been in the earlier
14 documents, the agreement with the pre-
15 petition lenders, Mr. Brilliant's
16 clients, makes a lot of sense. So, we
17 are generally happy and pleased with the
18 outcome this afternoon.

19 THE COURT: Okay.

20 MR. ZIMEN: Your Honor, Ken
21 Zimen, again, for the record. The
22 agent, too, is supportive of the
23 resolution as described by Mr. Butler
24 with just one clarification, that the
25 time period for the committee to review

1 DELPHI CORPORATION

2 the values without prejudice to the
3 agents' rights or the rights to lenders
4 to make a 506(a) motion, if and when
5 they determine that to be appropriate.

6 THE COURT: Right.

7 MR. ZIMEN: And the super duper
8 claim that was described regarding
9 reimbursing essentially the estate for
10 the costs of obtaining avoidance
11 proceeds before they would be available
12 to satisfy indimination in value claim,
13 that's to the extent not already paid,
14 since it's our property that's going to
15 pay a lot of the expenses to the estate
16 already. It's not a double dip, it's
17 the same concept.

18 THE COURT: Okay. Very well.

19 I agree that it's a reasonable
20 compromise and resolution on this basket
21 of issues and so I would approve it
22 subject to the whole order, of course.

23 MR. BUTLER: Your Honor, moving
24 along, I think the next person who wants
25 to be heard is Mr. Bienenstock about

1 DELPHI CORPORATION

2 General Motors.

3 THE COURT: I'm sorry, there
4 was one small thing. 'Cause I looked at
5 this a little differently, in one
6 respect, and Mr. Zimen's comment about
7 double dipping made me remember. Right
8 now, on page 41, a committee is limited
9 to \$250,000 to perform the
10 investigations commenced by its charge
11 to look at the banks' liens and claims.
12 And that seemed reasonable to me for
13 avoidance actions and other causes of
14 action, but more and more investment
15 bankers charge. I would assume that the
16 work of the committee's financial
17 advisor and attorney left a value of
18 what the debtor is and hence what the
19 collateral is. Probably wouldn't be
20 covered in that \$250,000, would it,
21 anyway? Investment bankers eat that up
22 in about a month a half.

23 MR. ZIMEN: Acknowledging that
24 we all may be in the wrong line of work,
25 Your Honor, I guess we should delete

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2 that. I don't think we ever found it,
3 we going to commence litigation, clearly
4 they need to be able to respond. And to
5 do financial investigation, I think this
6 is -- I'm sorry --

7 THE COURT: Okay.

8 MR. ZIMEN: You know, from our
9 perspective, I think the debtors have a
10 vested interest in this as well because
11 this is a case where their real hope is
12 substantial unencumbered value.

13 THE COURT: This is covering
14 all academic --

15 MR. ZIMEN: Put out.

16 THE COURT: Just looking ahead
17 to hope's possibility.

18 MR. ZIMEN: Hope so, Judge.

19 So, I think I agree with Your Honor that
20 to the extent that the committee is put
21 to the test a bit, either determine
22 value for their own benefit to be able
23 to waive on this or being put to the
24 test because we filed 506(a) motion. I
25 don't believe the 250 has part in that.

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2 THE COURT: Okay. Sorry to
3 interrupt you, Mr. Butler.

4 MR. BUTLER: Your Honor, I
5 believe the next person who wants to
6 talk.-- I believe Mr. Bienenstock was
7 rising to indicate that his objection
8 was also resolved in General Motors
9 Corporation.

10 MR. BIENENSTOCK: Good
11 afternoon, Martin Bienenstock, with
12 Weil, Gotshal & Manges for General
13 Motors Corporation. Your Honor, coming
14 into this hearing, General Motors
15 Corporation had agreed on a proposed
16 order with the debtor in its capacity as
17 customer, and we were hoping that that
18 would be proved as it is. Of course,
19 there were subsequent arrangements that
20 Mr. Butler has described to the Court
21 which are going to require some
22 additional language. There's one
23 particular comment about conforming
24 language on adequately protected
25 interest and collateral which we felt,

1 DELPHI CORPORATION
2 if made, might, in certain sections of
3 the order and not in others, might have
4 a negative implication. So, after
5 discussing it with the debtor, we
6 determined the best thing is simply to
7 clarify this on the record. It arises
8 under Paragraph 18 of the proposed
9 order, which is applicable to all
10 customers. In general, Your Honor, what
11 paragraph 18 does, is it provides
12 customers first a replacement lien for
13 their allowable setoffs on their first
14 petition payables, because they'll be
15 paying their pre-petition payable into
16 the estate. But the post-petition lien
17 may or may not have any value because
18 it's second next to the DIP lenders'
19 first lien. So, if it is insufficient
20 to fully protect the customer's
21 allowable setoff claims, Paragraph 18
22 provides for the customers to have other
23 liens, some are third liens, on property
24 of the estate behind the pre-petition
25 lenders. Some are second equal liens

1 DELPHI CORPORATION
2 with the pre-petition lenders on
3 property that had not previously been
4 part of a collateral package. There's a
5 provision in paragraph 18 that provides
6 for what I just described and 507(b)
7 claims in a certain priority to back up
8 the liens. The clarification I wanted
9 to make and, I think, General Motors
10 would want and I suspect all of the
11 customers would want the debtors or any
12 party of interest to speak up if they
13 don't think the meaning of the order is
14 this. If, hypothetically, a customer
15 has an allowable setoff claim above a
16 million dollars as of the petition date
17 and it turns out that the replacement
18 liens are worth \$800,000. The other
19 liens, the second and third liens and
20 the 507(b) are supposed to protect the
21 \$200,000 diminution. That's the
22 diminution of the allowable setoff claim
23 as per the beginning. We think it's
24 plain, that's what we intended. We
25 think that's what the debtor intended

1 DELPHI CORPORATION

2 and the pre-petition banks understood
3 and the committee understood. But, lest
4 there be any confusion on that, we
5 thought it's important to put it on the
6 record.

7 THE COURT: Okay. Well, I
8 certainly would. All of the grants a
9 letter of protection here, not just for
10 setoff claims but for the other secured
11 creditors to cover diminution only.

12 MR. BIENENSTOCK: Our point is
13 it's diminution from the value of our
14 allowable setoff claim.

15 THE COURT: The original setoff
16 claim?

17 MR. BIENENSTOCK: That's right,
18 yes.

19 THE COURT: Okay.

20 MR. BIENENSTOCK: Thank you.

21 THE COURT: In any event, just
22 -- I'd make sure I understand this as a
23 play, this sort of DIP provides the
24 mechanism for -- I got to turn ordinary
25 core of setoffs and without lifting the

1 DELPHI CORPORATION

2 very next day to let that happen, right?

3 MR. BIENENSTOCK: Yes. So that
4 will, in effect, reduce at least some
5 customers' allowable setoff claims that
6 would need protection.

7 THE COURT: So, it's important,
8 obviously, to keep a record of what
9 their claims were at each point so this
10 can be tracked.

11 MR. BIENENSTOCK: Well, at
12 least for General Motors, we will do it
13 and I'm quite sure Delphi will have a
14 counter record.

15 THE COURT: Okay.

16 MR. BIENENSTOCK: Which
17 hopefully will match up.

18 THE COURT: Okay.

19 MR. BIENENSTOCK: Thank you,
20 Your Honor.

21 MR. BUTLER: I'm not sure I
22 follow exactly how Mr. Bienenstock got
23 to the conclusion, I will confirm to the
24 Court on the record that the conclusion
25 he reached is one that the debtors

1 DELPHI CORPORATION

2 concur with.

3 THE COURT: Okay.

4 MR. BUTLER: And, as the Court
5 also stated, Your Honor, moving now to
6 some other issues, if we may. I think
7 we have resolved, I don't know. Is Mr.
8 Somerstein still in the courtroom? I
9 believe he now resolved any issues that
10 the DIP lenders have, the pre-petition
11 agent has, the Goodwin Proctor Group has
12 as part of the pre-petition bank group
13 has, the creditors' committee has and
14 General Motors has, as to the order that
15 was filed as the Debtors' 4, with the
16 changes that we have thus far placed on
17 the record. That leaves us with a --
18 turn to Debtors' 28 and 29 in terms of
19 the objections that are locked. That
20 leaves us with objections from debtors'
21 setoff and lien claimants, the vast
22 majority of which had been resolved,
23 based on the treatment that we proposed
24 here, and others who still want to
25 address the Court. I'm going to ask us

1 DELPHI CORPORATION
2 to get to those in a few moments, but I
3 want to address any other objections
4 first. And I think the only other
5 objection that has not been fully
6 resolved, other than to be getting off
7 into the setoff bucket, if you will, or
8 basket, is that of Bank of America as it
9 relates to their interest as an aircraft
10 lessor. And in that respect, they had
11 filed an objection that wanted to make
12 it clear that the interest that were
13 being given here today did not
14 negatively implicate the aircraft leases
15 and certain permissity and other matters
16 relating that. And, in fact, there is
17 language in paragraph 25 of the order,
18 page 54 of Debtors' 4 that is quite
19 explicit in that regard, and I think,
20 frankly, stated with what Your Honor
21 stated at the first day hearing in terms
22 of Your Honor's expectation with
23 aircraft leases and property that wasn't
24 necessarily property of the estate, but
25 even beyond that, is now explicit as to

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2 personal property that some of the
3 aircraft leases and so forth. I believe
4 that that language as it stands is
5 acceptable to Bank of America but I
6 believe Mr. Mares is on the phone and
7 there are other things that they wanted
8 the debtors to do beyond this language
9 that I believe Mr. Mares still wanted to
10 address the Court; we simply couldn't
11 accommodate the needs.

12 THE COURT: Okay.

13 MR. MARES: Your Honor, thank
14 you very much, Ted Mares. We had had
15 long conversations with debtors' counsel
16 and we've nearly narrowed down the
17 issues to three. Number 1, there is
18 some ancillary property that includes
19 cash collateral generated by the
20 aircraft that we are asking that it not
21 be subject to a lien and I think that's
22 the understanding, we had asked --

23 THE COURT: How does the
24 aircraft generate cash collaterals it
25 moves down?

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2 MR. MARES: There are charter
3 agreements.

4 THE COURT: Okay.

5 MR. MARES: And there are
6 revenues payable under the charter
7 agreements. They're potentially our sub
8 leases, although I'm not sure that there
9 are any in businesses right now, but the
10 charter agreement does let show the
11 revenues that are involved.

12 THE COURT: Okay.

13 MR. MARES: So, what we've
14 asked, and we understand that the
15 debtors are using whatever cash
16 collateral that generated by the charter
17 agreement, we just want to make clear
18 that in that with the insertion of a
19 phrase in paragraph 25, just to make
20 sure that the liens do not cover
21 property that is subject to the lease
22 agreements or at the security for. I
23 haven't heard that from them on that,
24 but I think what Mr. Butler said I
25 contest that he wanted to do that. The

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2 second item is, we are objecting to the
3 subordination of our 365(d) 1020.

4 THE COURT: Let's take them one
5 at a time, Mr. Mares.

6 MR. BUTLER: I think the issue,
7 and counsel for the DIP lenders has
8 reasoned as well, the issue the debtors
9 have, is, we believe it's always cut off
10 by the order is that as it relates to
11 this particular issue, and I think I
12 have it right, that if in fact there's a
13 valid lien in that particular property
14 then it is not negatively impacted by
15 this order.

16 THE COURT: No. That's covered
17 by the general language granting the DIP
18 lender a lien.

19 MR. BUTLER: And therefore, we
20 thought nothing else was needed --

21 THE COURT: The preexisting
22 liens are not prominent as laid out in
23 McGraff; I forget what it is.

24 MR. BUTLER: There about 17 I
25 believe, Your Honor. 7(c), like 7

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2 Charley.

3 MR. MARES: Your Honor, if it's
4 necessary to file a motion for adequate
5 protection we will, but we will just ask
6 the continuing liens be granted and put
7 out the ancillary --

8 THE COURT: No. The debtors
9 can't use cash collateral without your
10 consent, or I'm showing adequate
11 protections so you're stating to them
12 now you don't consent.

13 MR. MARES: I'm sorry.

14 THE COURT: So the balls are in
15 their court at this point.

16 MR. MARES: Okay. Your Honor,
17 thank you.

18 THE COURT: Okay.

19 MR. MARES: And the only other
20 point is that we are objecting to the
21 subordination of our 365(d)(10) claims
22 and any other claims that are granted
23 pursuant to this order. The debtor is
24 getting use of the claim during the
25 Chapter 11 case; there is an LB status,

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2 you know 365(d), and claims and we
3 should just add that --

4 THE COURT: As these were
5 secured or misreleases.

6 MR. MARES: These are two
7 leases but that security for the lease
8 application there's a small part in what
9 I call collateral charter agreement,
10 managing agreement sub leases that are
11 separately pledged here to be leased a
12 two lease obligation.

13 MR. BUTLER: Your Honor, the
14 debtors' problem with the language Mr.
15 Mares's clients wanted him to pursue
16 here is that it really attempted to have
17 the debtors agree with lots of things.
18 That these were two leases this part
19 secured, and the relationships between
20 them. And we are prepared simply to do
21 that. We understand Your Honor's
22 admission about cash collateral, but I
23 don't believe that this order is drafted
24 if Mr. Mares's client has that which he
25 claims that they have, that they are

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2 negatively impacted.

3 MR. MARES: Just to respond
4 Your Honor, I'm not asking for -- I
5 understand Mr. Butler's point. I guess
6 all I'm asking is to the extent that we
7 do have two 365(d) cash claims, then
8 those not be subordinated with other
9 claims that would arise from this order.

10 MR. BUTLER: Mr. Mares, was
11 that a part of your objection?

12 THE COURT: I have to confess,
13 I have to give orders 'cause I didn't
14 look at this issue until about 10
15 seconds ago.

16 MR. BUTLER: I never heard that
17 raised by Mr. Mares in your objection,
18 was it raised?

19 MR. MARES: I think it was
20 raised in discussion, it's not on the
21 objection certainly as discussions with
22 Mr. Cantor and others.

23 MR. BUTLER: Well, I think what
24 you're asking for is not acceptable
25 probably to anybody in the courtroom in

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2 terms of the lenders or anybody else.

3 And, Your Honor, he didn't raise it in
4 any objection I heard.

5 THE COURT: I certainly want to
6 understand the objection, this isn't as
7 to the specific assignment that you've
8 been given of a lease because that would
9 be the debtors -- that wouldn't be
10 covered by 365 -- we're talking about
11 either that the leases are --

12 MR. MARES: Your Honor, we
13 believe these are true leases. And the
14 lease obligations are monthly lease
15 statements that are due Bank of America
16 by the debtor. And under 365(d)(10) the
17 performance of these obligations, for at
18 least after the 60-day grace period,
19 arguments such as priority. The DIP
20 order does provide for subordination of
21 administrative receptance. We are
22 asking that our 36 id 10 and to be
23 (indiscernible) those names doesn't
24 become true lease, that would be
25 subordinate.

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2 MR. BUTLER: Your Honor, this
3 is subordination -- Mr. Mares is saying
4 is that we're giving a super-party claim
5 of the DIP line, there the answer is,
6 you bet. And it is a super-priority's
7 intended to be. They're not going to
8 give it up for this or any kind of
9 administrative claim outside of what's
10 said in the order. This, you know,
11 objection is untimely, among other
12 things, Your Honor.

13 THE COURT: I'm going to deny
14 this objection for that reason. Unless
15 you're prepared to have our own trial
16 today on 364(c) which I think highlights
17 the untimeliness of the objection, it's
18 just not an issue of adequate
19 protection; this is just whether the
20 debtors could get financing on a simple
21 non-priming, non super-priority basis.

22 MR. MARES: Other than that,
23 all of our other objections are gone.

24 THE COURT: Okay. All right.

25 MR. BUTLER: Your Honor, I

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2 think, and this is so I ask him to quote
3 him on the phone to see if I had missed
4 anyone. Other than setoff claimants, is
5 there any other party who has an
6 objection to this matter?

7 THE COURT: I'm going to say
8 this once more, please turn off your
9 Blackberries it affects the transcript.
10 This is on a digital recording system,
11 everything else about this system is
12 superior to the prior system, so -- but,
13 if you have your Blackberry on and get
14 an e-mail, there's static on the CD and
15 therefore the people who transcribe it
16 won't be able to hear it. So please
17 turn off your Blackberries.

18 MR. ROSENBERG: Your Honor, I
19 wonder if it's somebody on the
20 telephone, because it also affects it on
21 that end, you might --

22 THE COURT: I guess it does,
23 and maybe that is the case. If you're
24 on the telephone you must turn it off
25 too.

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2 MR. BUTLER: One other party
3 wants to be heard before we get to
4 setoff.

5 MR. NEWMAN: Your Honor, very,
6 very briefly, Max Newman of Schaffer and
7 Weiner on behalf of nine parties. We
8 filed a joint objection relating, in
9 part, to tooling liens and we had a
10 discussion during the break with respect
11 to resolving that with some additional
12 language in paragraph 6 of the financing
13 order relating to the administrative
14 expense claim of the DIP lenders. They
15 had put a carve-out in section 7(d) of
16 the order, with respect to liens of the
17 type that's on the top of page 22 of the
18 red-line.

19 THE COURT: All right.

20 MR. NEWMAN: And that carve-out
21 was not in place also with respect to
22 the super-priority administrative claim.
23 And it was my understanding that there
24 was an agreement to import that same
25 carve-out, that same exception into the

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2 super-priority lien status.

3 THE COURT: What, I'm sorry.

4 Super-priority lien or super-priority
5 claim?

6 MR. NEWMAN: Super-priority
7 claim. I'm sorry, Your Honor.

8 THE COURT: All right. Is
9 there such an agreement?

10 MR. NEWMAN: Your Honor, there
11 is.

12 THE COURT: Okay.

13 MR. NEWMAN: In that there's
14 language that's going to go into 6(a),
15 paragraph 6(a) that is going to make
16 sure it excludes the issue that is
17 raised here. The language and the DIP
18 lenders agreed to this, I'm told. The
19 language that appears on page 22, at the
20 top of page 22 in Roman IV, involving
21 statuary liens or securities just
22 arising after the petition date and
23 permitted under the DIP credit agreement
24 that by operation of law would have
25 priority over pre (indiscernible)

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2 security interest. That language is
3 going to also appear in paragraph 6(a)
4 in the fifth line.

5 THE COURT: Okay.

6 MR. NEWMAN: Thank you, Your
7 Honor, and I wish to have my clients so
8 support the entry of the order as
9 drafted.

10 THE COURT: Okay.

11 MR. BUTLER: Now I'm asking
12 anyone other than setoff claimants, is
13 there any other objector on the phone or
14 in the courtroom who has an issue with
15 the order? Your Honor, I think with the
16 Court's permission, that item in turn
17 setoff, the last remaining bucket which
18 is the setoff claimants. Your Honor,
19 there are a series of matters I want to
20 read into the record much like Mr.
21 Bienenstock's clarification. I would
22 point out, Your Honor, that we're now
23 focused primarily on paragraph 18 of the
24 order, which I concede, Your Honor, is
25 the longest paragraph I have ever seen

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2 in a financing order. But it is the
3 product of extraordinary lengthy
4 negotiations between all the major stake
5 holders in this case, I think, that had
6 a direct interest in this. Other than
7 -- I should be candid about this, other
8 than the creditors' committee which did
9 not participate directly in the
10 immediate negotiations relating to this,
11 but now support entry of the order.
12 And, with respect to that language and I
13 don't think we proposed to make any
14 changes to that language because it is
15 so delicately negotiated. But if you
16 want to read some clarifications which I
17 understand is all the objections of
18 maybe 20 or 25 of the parties on board,
19 the first, Your Honor, is just a
20 statement that, notwithstanding the fact
21 that there is a series of alternative
22 dispute approaches in this order, this
23 is a first. Go work out your setoffs
24 with the company and the committee.
25 Second, go to mediation. Third, go to

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2 arbitration or you can also come to
3 court. It's not intended, and we'll
4 certainly clarify if there is any
5 language clarification we need to, but
6 I'll say on this record, it's not
7 intended to prevent anyone from coming
8 to court at any time. Now, it also
9 means that there may be, some of us will
10 come before Your Honor and say, Your
11 Honor ought not grant the relief they're
12 seeking without having gone through all
13 that. So, we reserve all of our
14 rights; the committee uses its rights,
15 and other parties do. But the fact is,
16 if an individual -- you know, setoff
17 claimant, wants to come to court, then
18 they could come to court.

19 THE COURT: Subject to the
20 other parties want to argue that they
21 should go through these other alternate
22 dispute.

23 MR. BUTLER: But the order
24 doesn't require them to do it, Your
25 Honor.

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2 THE COURT: Okay.

3 Mr. BUTLER: And, I want to
4 make that clear.

5 THE COURT: I'd like the
6 parties to (indiscernible due to static
7 on digital recording), because I've got
8 (indiscernible due to static on digital
9 recording) If that's the deal I think
10 it'll give you the fact that could none
11 of the setoff claimants are here, just
12 the objectants are here; you're not
13 making clear to them they have a right
14 to come to court. Now, pertaining to
15 the other procedures that are being able
16 to request that ultimately the dispute
17 was an issue in procedures be followed
18 first.

19 MR. APPLEBAUM: (indiscernible
20 due to static on digital recording)

21 THE COURT: What I'm saying,
22 and I'm not sure I understand you, what
23 I'm saying is just repeating what Mr.
24 Butler is saying, which is that by way
25 of these punitive dispute resolution

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2 mechanisms in the agreement --

3 (indiscernible due to static on digital
4 recording)

5 MR. BUTLER: And, Your Honor, I
6 should point out that paragraph 18(a) on
7 page 40 of Debtor's 4, does have
8 language in it to that effect.

9 THE COURT: That's fine.

10 MR. BUTLER: And, we put it in,
11 but we'll make sure it's very clear, but
12 I want it stated on the record.

13 THE COURT: It is clear.

14 MR. BUTLER: Your Honor, the
15 next item, and this again we're in
16 paragraph 18 in all of these. With
17 respect to paragraph 18(a)(4), we want
18 to clarify that nothing in the order
19 affects the right of any party to
20 exercise post-petition setoffs or
21 recoupment rights out of respect to
22 these post-petition matters. Second,
23 respect to Section 8, paragraph
24 18(a)(1), to the extent that any party
25 has a valid pre-petition setoff right,

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2 nothing in the order affects such
3 party's rights. However, with respect
4 to valid pre-petition recoupment,
5 nothing in the order diminishes such
6 recoupment right, but channel such
7 rights into the program to find in
8 paragraph 18. Third, this is in respect
9 to paragraph 18(a)(3), there is no cap
10 in the ordinary course setoff or
11 recoupment rights of any party other
12 than General Motors Corporation, which
13 is as defined in the order. Fourth,
14 with respect to paragraph 18(a)(1),
15 similar to the point when the order
16 printing is made, the pre-petition
17 setoff or recoupment rights of any
18 party, which is a valid setoff or
19 recoupment right, will be permitted
20 under paragraph 18, irrespective of the
21 financial condition of the debtors. And
22 finally, with respect to paragraph 7(c),
23 the pre-petition and post-petition
24 setoff and recoupment rights of any
25 party are senior to the rights of the

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2 DIP lenders.

3 THE COURT: Oh, okay. And a
4 DIP lender isn't a regular debt, no
5 standard?

6 MR. BUTLER: Can I have a
7 moment, Your Honor, please?

8 THE COURT: Yes.

9 MR. BUTLER: Your Honor, I used
10 the word negative earlier when I
11 shouldn't have. I used a couple extra
12 words I shouldn't have, I'm told. And
13 the Paragraph 7(c), and I'll read it
14 again, the words again, the pre-petition
15 setoff and recoupment rights of any
16 party are senior to the rights of the
17 DIP lenders. Let's see what paragraph
18 7(c) says, and a DIP agent agrees with
19 that statement.

20 MS. O'DELL: I'm sorry, Your
21 Honor, Maureen O'Dell again. We talked
22 with this agent. We'd like to consult
23 with this, we're just not sure we really
24 understand it.

25 THE COURT: You're talking

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2 about pre-petition loans, right?

3 MR. BUTLER: Yes, Your Honor.

4 THE COURT: Okay.

5 (indiscernible due to static on digital
6 recording). Let's just say it's that
7 there not getting primed about the
8 dipping.

9 MR. BUTLER: Correct.

10 THE COURT: All right. I think
11 all of those statements it includes it
12 in the order here in what I read. So,
13 to the extent that they help clarify the
14 order, hearing that kind, we'll talk
15 then.

16 MR. BUTLER: Your Honor, I
17 believe there are some parties, some
18 setoff claimants or alleged claimants
19 that still want to address the Court.

20 THE COURT: Okay.

21 MR. BUTLER: Your Honor, it
22 would be helpful if they do so, if
23 people would identify what their
24 objection is so we can track to it.

25 MR. McDOWAL: (indiscernible

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2 due to static on digital recording)

3 THE COURT: You'll have to
4 speak up a little louder, sir.

5 MR. McDOWAL: That's okay. The
6 lenders for the first (indiscernible due
7 to static on digital recording)

8 THE COURT: To the extent that
9 ultimately you still have to prove your
10 claim under the Bankruptcy Code and
11 you'll to set up on under the Bankruptcy
12 Code.

13 MR. McDOWAL: Understood
14 (indiscernible due to static on digital
15 recording)

16 MR. PLANTES: Your Honor, Neil
17 Plantes. I mean, paragraph 18 which has
18 been so carefully negotiated says what
19 it says and I don't want to sort of have
20 these blatant -- I understand what the
21 Court said and I understand what those -
22 - I believe that to be the case that
23 they have to prove up their matters, and
24 there's a process here on how they can
25 deal with these matters under the DIP

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2 financing order.

3 MR. McDOWELL: Well Your Honor,
4 paragraph 18 says what it says and the
5 language that third provision on this
6 could be argued that you altered it
7 (indiscernible due to static on digital
8 recording)

9 THE COURT: Well the reason I
10 think people are having problems with
11 your statement is that, for example,
12 page 62, offers, you know, subsequent
13 procontractual rights. So if you're
14 accepting the existence of a Bankruptcy
15 Code, then I agree with you.

16 MR. McDOWEL: So the exception
17 of 362(a) --

18 THE COURT: The Bankruptcy Code
19 generally, I mean, because of 62 -- 362.
20 Okay. All right.

21 MR. McDOWAL: Thank you.

22 THE COURT: Sure.

23 MR. PASCOE: Your Honor, this
24 is Timothy Pascoe, on behalf of Ford
25 Motor Company.

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2 THE COURT: Yes.
3 MR. PASCOE: Your Honor, our
4 issue is with the inclusion of
5 recoupment and the definition of a
6 setoff. We have no problem with recoup
7 setoffs, obviously the exercise of
8 setoffs are March 8. The 362,
9 recoupment right, they're not,
10 especially ordinary corp recoupment,
11 because there's nothing but a true up
12 between the customer and the supplier,
13 are not affected by the automatic stay
14 and it is proper in an order like this
15 to restrict our recoupment right even in
16 the context of the DIP financing. We
17 object to going through all of the
18 procedures that are set forth in here to
19 exercise this right. It is simply not
20 affected by the automatic stay and is
21 against all ordinary business practice.
22 We're talking about the way we do
23 business and we make it absolutely
24 imperative that we at least be allowed
25 to continue our recoupment as opposed to

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2 our setoff right.

3 THE COURT: Well, I guess I
4 have two things to say in respect of
5 that. First, as I read this, and as
6 clarified further by Mr. Butler, all
7 that means is that paragraph 18 is
8 intended to change the substantive
9 rights that is doing business as Delphi
10 have in respect of true recoupment
11 claims, recoupment rights. That being
12 said, there also -- or recognition or
13 recoupment rights, but also it's the
14 setoff rights that ordinary course, by
15 nature, will not be because of the
16 automatic stay. But, they are subject
17 to the procedure which seems reasonable
18 to me. Particularly, the rideout of any
19 such party to try to expedite that
20 procedure by coming back to court, to
21 determine a regular refrain act. But
22 some of the claims is a recoupment claim
23 or a setoff claim, is in fact a
24 recoupment lawyers that set out claim
25 and the cases are unfortunately pretty

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2 ninny and they don't (indiscernible) as
3 to what a recoupment claim is, what a
4 recoupment right is, and frequently what
5 part of recoupment right a court finds
6 is not. And, of course, any bankruptcy
7 lawyer, working for herself will tell
8 the client if there's any doubt what's
9 not exercised sub (indiscernible due to
10 static on digital recording). So I view
11 this procedure as one that is beneficial
12 to both sides in this transaction in
13 that inlay is out of an action for the
14 debtors with input from the creditors'
15 committee to make those decision in the
16 first instance and it's really clear
17 very quickly and something that's not
18 very clear (indiscernible due to static
19 on digital recording) to do it in an
20 organized way. It tends to happen that
21 the objection could go around and
22 debtors could have a chance to come to
23 me and that would stop. But I believe
24 that sooner is somehow taking away
25 peoples rights to become what, of

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2 course, there's to recoup makes the
3 question some of them do have the right.

4 MR. PASCOE: All right. Thank
5 you.

6 THE COURT: Okay.

7 MR. REISMAN: Your Honor Steven
8 Reisman with the firm of Curtis Mallet-
9 Prevost on behalf of Flextronics which
10 is the largest trade creditor in this
11 case. I really have three points to
12 make, really four points to make. One,
13 I compliment that debtor on their
14 efforts with respect to the setoff
15 provisions and the mediation arbitration
16 protocol that they're trying to put in
17 place. The first point I'd like to
18 make, Your Honor, is with respect -- it
19 is a substantive point with respect to
20 18(a)(2), the last sentence. It's a
21 little unclear to me and I'm looking
22 from a black-line, Your Honor, so I
23 apologize. But 18(a)(2) sentence, page
24 45 of the black-line. It says,
25 notwithstanding any award in any such

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2 arbitration in no event shall the setoff
3 claimant be permitted to exercise its
4 setoff right against any payables other
5 than pre-petition payable except as
6 hereinafter set forth. I just asked for
7 a modification of that to say except
8 there set forth in this paragraph 18
9 because it talks about the full event
10 and after that sentence about the
11 ability to set off against post-petition
12 payables as well.

13 THE COURT: Okay. This sounds
14 -- if it makes sense to me.

15 MR. REISMAN: What we're trying
16 to avoid with all these parties is --
17 there are literally 50 people who want
18 to wordsmith that site. It is --
19 paragraph 18 deals with setoff --

20 THE COURT: If there's any
21 remedy as to post-petition payables that
22 actually precede this paragraph then I
23 think Mr. Reisman is right. So maybe
24 you should -- just check to see whether
25 they are, I'm sure if they are then let

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2 the kids fix this one.

3 MR. REISMAN: Your Honor, the
4 second point I have to make, and it's
5 really the second and third, I think
6 it's appropriate for the debtor to put
7 in place some type of protocol on this
8 mediation setoff. For example, they say
9 that notice is to be given to the
10 committee, the debtor, the agent, but no
11 one really knows who to send the notice
12 to and we don't want to -- we want to
13 get the right people to try and go
14 through the issues. As a first line,
15 we'll work through the business people
16 in trying to work through this. But if
17 we can't, I think people should have the
18 right to know, you know, who gets that
19 notice. And it should also set forth,
20 with respect to the mediation and the
21 arbitration, who's going to bear the
22 cost and the process for dealing with
23 that. And I leave it to the debtors to
24 propose something in that regard for the
25 various parties that have the setoff

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2 rights.

3 THE COURT: All right. At
4 least it's their first point; I'm sure
5 the debtors will work out problems with
6 correcting on a process that they
7 accomplish this. And it's probably
8 going to be, you know, at a couple of
9 different levels. But the easy ones are
10 probably dealt with one level in the
11 heart of ones, go to a different level,
12 then you get into actually contesting
13 these things. But I would like to -- I
14 may be pretty busy. So that's the next
15 time to turn to.

16 MR. REISMAN: Thank you.

17 MR. TOERING: Gordon Toering,
18 Your Honor, on behalf of Robert Bosch
19 Corporation. I just want to confirm.
20 There has been a lot of discussion about
21 the particular paragraph 18. I just
22 want to make sure that all of us are
23 clear. And I understood what the Court
24 said and just wanted to verify that I
25 understood correctly. My understanding

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2 of this is that this procedure in
3 paragraph 18 -- it is a procedure. And
4 that a de-plaint setoff claimant could
5 come in to this Court, file a motion for
6 relief from stay and at that point the
7 debtor and any other party of interest
8 could say, not that your order does with
9 this order, to go through this
10 arbitration and mediation procedure.

11 But rather that the bed would be
12 expedient that the Court should abstain
13 on the basis of any number of factors,
14 is that correct, Your Honor?

15 THE COURT: Yes. Obviously I'm
16 giving people warning, if you get into a
17 procedure and you're coming to me
18 because you don't like how it's going,
19 you're going to know very quickly that
20 I'm going to send you back to the
21 procedure. So, I'm not giving people an
22 option to pursue mediation arbitration
23 and change their mind in the middle of
24 it. I guess you can do it, but it will
25 not be very pleasant hitter.

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2 MR. TOERING: That wouldn't be
3 our intent, Your Honor.

4 THE COURT: I'm sure it
5 wouldn't.

6 MR. TOERING: Your report is
7 just to verify having the post-petition,
8 my understanding is that post-petition
9 setoff it does affect going forward
10 shipments because Bosch is both a
11 supplier and a customer of Delphi.

12 THE COURT: Right.

13 MR. TOERING: My understanding
14 is that as to post-petition setoff
15 rights, that those would prime the DIP
16 lenders and anybody else and that was, I
17 thought, an understanding that had been
18 reached. Because that does affect
19 whether or not we're willing to extend
20 the credit to the debtor, and so forth,
21 so I'd like some clarification on that.

22 MR. BUTLER: I don't want to
23 give you the answer what's prime or
24 what's not prime. Their permitted to
25 post-petition setoff rights can be

1 DELPHI CORPORATION

2 exercised. I'll leave it at that.

3 MR. TOERING: Well, Your Honor,
4 just to follow that up, I guess that
5 leaves it somewhat open. I just don't
6 want a situation where a lender is
7 coming in and saying if worst case
8 scenario, the case starts crumbling and
9 then lender comes in and says your
10 setoff rights are subservient to our
11 rights. And that's what I'm trying to
12 give it at this point. And, we could
13 work this out; I guess this is something
14 we can manage in terms of the credit
15 issue, but it is something that if we
16 can clarify today, I think it would be
17 helpful.

18 MR. BUTLER: I think it's
19 clarified on page 43 of the order which
20 says that nothing contained here shall
21 limit the discretion of the debtors to
22 pay warranty or private call claims in
23 accordance to those of that court, limit
24 the right of any party in interest to
25 exercise their post-petition setoff or

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2 recoupment against a post-petition
3 payable and the write goes on to the
4 names, I mean I think it's described
5 right in the order. Post against post.

6 MR. TOERING: Describe it as a
7 top priority. That's my point, Your
8 Honor.

9 THE COURT: Or everything is
10 what it is. They included line 12 here
11 of the ACC.

12 MR. BUTLER: Is there anyone
13 else who wants Vesey Corporate for the
14 evidentiary record? Your Honor,
15 recognizing that when a debtor asks a
16 bankruptcy court to consider section
17 364(d), the Bankruptcy Code would affirm
18 the obligation to place evidence in the
19 record irrespective of the existence of
20 any objection. I'd like, with the
21 Court's permission, to first move the
22 admission of Debtors' Exhibits 1-29.

23 THE COURT: All right, that's
24 from that binder you gave me in which 1-
25 5 are the final financing documents, 6-

1 DELPHI CORPORATION
2 12 are alternative financing proposals
3 by other groups to the debtors, and 13-
4 16 are evaluation materials; 17-22 are
5 the pre-petition financing documents,
6 22-27 are various Security and Exchange
7 Commission filings and the last two are
8 already in the record. Those were
9 attached, as they were summaries of the
10 objections.

11 MR. BUTLER: Yes, Your Honor.

12 THE COURT: Does anyone have
13 any objections to those being admitted?
14 All right. They're admitted.

15 MR. BUTLER: Your Honor
16 indicated that it'd be acceptable for
17 the debtors to present pre-proffers.

18 THE COURT: Yes. These people
19 are here.

20 MR. BUTLER: Your Honor,
21 they're all here. I'll ask them to
22 stand when I introduce them. The first
23 witness I would call would be David
24 Resnick. Mr. Resnick's standing in the
25 courtroom and is the debtors' investment

1 DELPHI CORPORATION

2 banker. The second witness, Your Honor,
3 we would call is Mr. Scott King, Mr.
4 King, from FTI. And the third is the
5 debtors' chief reconstruction officer,
6 Mr. John Sheehan.

7 THE COURT: Okay.

8 MR. BUTLER: Your Honor, in
9 support of motion with debtors that are
10 off the testimony of David Resnick, he's
11 the managing director of Rothschild Inc.
12 Mr. Resnick is present, called, would
13 testify as follows. First, he would
14 testify as to his background, his
15 familiarity with the debtors'
16 operations. He would testify that the
17 debtors' board of directors authorized
18 Rothschild Inc., its financial advisor,
19 investment banker, to seek post-petition
20 DIP financing from its pre-petition
21 secured lenders and other third-party
22 lending institutions. Mr. Resnick would
23 testify that he and other persons,
24 including the debtors' financial
25 advisors, FTI consulting Inc., determine

1 DELPHI CORPORATION
2 that a DIP credit agreement, general in
3 the terms of that proposed, was critical
4 to the debtors' ability to operate in
5 Chapter 11 and for the debtors'
6 successful reorganization. Mr. Resnick
7 would testify that, in his view, the DIP
8 credit agreement is necessary for the
9 debtors to operate the business. He
10 would testify that he participated in
11 the negotiations of the terms and
12 conditions of the agreement and that
13 they were negotiated at arm's length and
14 in good faith. Mr. Resnick would
15 testify that with the credit provided in
16 the DIP facility, it is the debtors, and
17 his view that the debtors would be able
18 to maintain or should be able to
19 maintain adequate cash balances
20 customary necessary for companies of
21 this size and in this industry to
22 operate its businesses, in order to
23 preserve the ongoing value to businesses
24 for the benefits of all parties and
25 interest. Mr. Resnick would also

1 DELPHI CORPORATION
2 testify that he, in participating with
3 the debtors' management team, ran a
4 process to evaluate potential proposals
5 and met with four major mind-setter
6 institutions, all of whom produced
7 proposals and the finding that would
8 testify that the file proposals and you
9 would identify those proposals as the
10 proposals set forth in Debtors' 1 and
11 the alternative financing proposal is
12 not accepted by the debtors as Debtor's
13 6-12. Mr. Resnick would testify that
14 when the debtors approached these
15 financial institutions they made
16 presentations to the institutions and
17 asked them to provide both priming
18 facilities and non-priming facilities --
19 take-out facilities in as significant an
20 amount of money as the institutions
21 could provide or would provide, but in
22 the case of a take-out refinancing not
23 less than 4 billion. He would testify
24 that in evaluating these proposals that
25 the debtors and their financial advisors

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2 analyzed carefully the structures;
3 discussed the structures with the
4 different institutions and ultimately
5 reached a determination that there were
6 essentially three gating elements that,
7 in the view of the debtors and in the
8 view of Mr. Resnick as a debtors
9 investment banker, where the tantamount
10 considerations are in determining what
11 was an acceptable facility that could,
12 in fact, meet the requirements of the
13 debtors' financing needs. And those,
14 Mr. Resnick would testify that those
15 three factors included execution risk
16 issues, issues relating to size and
17 liquidity of the facility and issues
18 relating to the economics of the
19 facility proposed. Mr. Resnick would
20 testify as to execution risks that in
21 his view this is, if not the largest,
22 among largest total packages, financing
23 packages sought in the history of the
24 federal system. It's four and a half
25 billion dollars in total. And the

1 DELPHI CORPORATION
2 debtors recognized that in trying to
3 take out financing of four billion,
4 which was the maximum the debtors had
5 obtained among the proposals, Mr.
6 Resnick would testify that as to the
7 four billion dollar facilities that the
8 debtors took into consideration, the
9 complexities of actually executing that
10 take-out facility which would have been
11 the largest in Mr. Resnick's, at least,
12 experience ever would be considered in
13 the federal bankruptcy system. Mr.
14 Resnick would also testify that he and
15 others at Rothschild, together with
16 members of management, consulted with
17 the senior managers and advisors at the
18 various -- at both JP Morgan and at
19 Citibank in particular, and were
20 advised, at the end of the day, that
21 those institutions believed that the
22 execution risk were significantly lower
23 in the priming facility than it was in
24 the take-out facility. In addition, and
25 that's reflected in the rates and in the

1 DELPHI CORPORATION
2 economic terms and in other provisions
3 that are in the record at this point,
4 Mr. Resnick would also testify that in
5 the final structure that was agreed, the
6 priming facility generated an additional
7 half a billion dollars worth of
8 liquidity for the company because the
9 other proposals, the non-prime
10 proposals; the take-out proposals
11 required a pay-down of the pre-petition
12 loans in the amount of approximately 500
13 million dollars so that the net
14 available would have been, in a take-out
15 would have been four billion. And, in
16 this particular structure where there
17 was a priming of the two and a half
18 billion dollar pre-petition that in fact
19 there would be an additional half a
20 billion or more of additional liquidity
21 available to the company. Mr. Resnick
22 would testify that in terms of
23 economics, that Rothschild benchmarked
24 economics in this facility against those
25 in its data base, that Rothschild is a

1 DELPHI CORPORATION
2 part of, during their course of
3 business, maintains a data base of
4 similar DIP financings; that Mr. Resnick
5 had, on behalf of Rothschild, has
6 participated in many refinancings and
7 DIP facilities, and that when they
8 reviewed the competitive data base that
9 the economics in this data base were
10 actually -- were benchmarked extremely
11 favorably to that which was in the
12 marketplace and in appropriate prior
13 DIPs that would be comparative. Your
14 Honor, Mr. Resnick would also testify
15 that he has reviewed the terms and
16 conditions of this DIP and these are the
17 DIPs -- the terms are fair and
18 reasonable. And as I indicated, would
19 testify that his opinion is based in
20 part on the database of selected
21 historical DIP facilities that is
22 maintained by Rothschild. In terms of
23 the debtors' needs, Mr. Resnick would
24 also point to the debtors' DIP
25 facilities of projections which are

1 DELPHI CORPORATION
2 included in the record at Debtors' 13,
3 and would point to the fact that the
4 four and half billion dollar facility,
5 based on the forward projections, would
6 suggest that at the end of the period
7 about a half a billion dollars of
8 liquidity would be available based on
9 the projections there. Mr. Resnick
10 would testify that, in his experience, a
11 company of this size and complexity, one
12 of the Fortune 50 companies in the
13 country, would in fact require a very
14 substantial excess availability in order
15 to operate its business and maintain the
16 confidence of its suppliers and
17 customers. Finally, Mr. Resnick, would
18 testify about the structure of Delphi,
19 and the structure of this restructuring
20 and which involve a bilateral message
21 where the company's U.S. entities are
22 involved in this Chapter 11 case, but
23 its global businesses are operating
24 outside of Chapter 11, even though many
25 of the products that it maintains are

1 DELPHI CORPORATION
2 operated on a horizontal, as opposed to
3 vertical, sort of structure, globally.
4 And, Mr. Resnick would testify, that in
5 dealing with a customer located outside
6 the United States, dealing with
7 suppliers outside the United States,
8 dealing with suppliers and customers
9 that have potential setoff claims and
10 recoupment claims, and other actions
11 that could be taken in connection with
12 the company, that it was extremely
13 important, in his judgment, to stabilize
14 the business that the company have the
15 DIP facility that is put in place. And
16 that in his professional opinion, there
17 was no other facility made available to
18 the debtors that met the debtors' needs
19 and requirements. Your Honor, that
20 would be sum and substance of Mr.
21 Resnick's testimony.

22 THE COURT: Okay. Does anyone
23 wish to cross-examine Mr. Resnick or his
24 testimony? All right, you can move over
25 to the next witness, then.

1 DELPHI CORPORATION
2 MR. BUTLER: Your Honor, the
3 next witness would be Mr. Scott King.
4 Mr. King had called to testify. He
5 would testify that he is employed by FTI
6 Consultant Inc. as a senior managing
7 director, that he needs FTI's method of
8 restructuring practice and that prior to
9 August of 2002, he was a partner for
10 five years at Price Waterhouse Coopers'
11 business recovery practice and held
12 various positions prior to that date.
13 Mr. King would testify that he has spent
14 more than 20 years of experience in
15 developing, implementing improvement
16 strategies for companies experiencing
17 financial distress. And that his role
18 at FTI is, in this assignment, is to
19 provide, among other things, on-site
20 assistance at the company in connection
21 with its Chapter 11 case, and dealing
22 with essential suppliers, and working
23 with the creditors' committee, and
24 working with the company in connection
25 with its relationships with its lenders.

1 DELPHI CORPORATION
2 It's the formulation of its former
3 borrowing projections, the formulation
4 of its business plan and other matters.
5 Mr. King would testify that he prepared
6 the document that has been admitted into
7 evidence as Debtors' 14, that that
8 document was prepared by him, based on
9 his examination of the debtors' books
10 and records, and based on his
11 examination of various reports that were
12 provided to him, including the reports
13 that had been admitted into evidence in
14 the debtors' exhibits relating to
15 various evaluations of the debtors'
16 collateral. Mr. King would testify that
17 in his opinion, based on a build up, on
18 a going concerned basis, that those as
19 much as 9.6 billion dollars worth of
20 collateral available to support the
21 adequate protection packages here, which
22 would consist of a two and half billion
23 dollar pre-petition lender claim, a two
24 billion dollar DIP lender claim, and as
25 much a five billion dollar equity

1 DELPHI CORPORATION
2 cushion that would available based on
3 the book values of PP&E, Property Plan
4 Equipment. Assessing the evaluation of
5 the foreign stock, assessing the
6 evaluation of the inventory, and
7 assessing the evaluation of receivables
8 and cash and the performance of those
9 assets in the debtors' ordinary course
10 of business on an historical basis, Mr.
11 King would also acknowledge that he
12 examined and relied on, in preparing his
13 testimony, relied on the Debtors' 16,
14 which is an appraisal prepared by Hillco
15 Appraisment Services as with respect to
16 Delphi PP&E which attributed an 850
17 million dollar allocation value to PP&E
18 as opposed to the 2.9 billion dollar
19 book value that the debtors currently
20 assigned to the PP&E. And if you
21 assigned the liquidation by the PP&E,
22 which Mr. King would suggest, is of all
23 the various collateral items the one
24 that he would acknowledge would have
25 perhaps more speculative amounts in

1 DELPHI CORPORATION
2 terms of whether liquidation or going to
3 turn out to be involved, that if you
4 assign liquidation value to that
5 particular bucket of collateral that the
6 total value of the collateral would be
7 somewhere in the 7.6 billion dollar
8 range, still providing an ample cushion
9 to the 4.5 billion dollars worth of pre-
10 petition and post-petition proposed
11 claims. Your Honor, Mr. King would also
12 testify, similar to Mr. Resnick's
13 testimony, with respect to the key items
14 of execution risk, size of the facility
15 and economics. How Mr. King qualify his
16 testimony with a much stronger emphasis
17 on size of the facility. It's Mr.
18 King's view, and in fact he would
19 testify that he was very active during
20 the consideration of these proposals in
21 pushing the company to get as large a
22 facility as the company could procure,
23 because Mr. King's professional opinion
24 that the company needed as much excess
25 liquidity as possible, given the

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2 uncertainties of the automotive sector,
3 the transformation challenges of the
4 company, in terms of the transformation
5 plan and strategies that it has
6 announced publicly. And the
7 contingencies dealing with the sort of
8 bi-motor arrangement trying to make sure
9 that all the customers and suppliers
10 understand the company had all of the
11 liquidity that it reasonably thought
12 necessary to address its issues. So,
13 Mr. King would testify that his
14 principal focus was how much money could
15 the company get, and he viewed that as
16 the most important factor involved here.
17 He will also testify that he
18 participated in the examination of all
19 the proposals and participated, along
20 with the members of FTI, in aspects of
21 the negotiations of the transaction.
22 And would testify that, in his
23 professional opinion, there was no other
24 financing available to the company that
25 would meet the company's needs and

1 DELPHI CORPORATION

2 requirements. And that would be the sum
3 and substance, Your Honor, of Mr. King's
4 testimony.

5 THE COURT: Okay. Does anyone
6 want to cross-examine Mr. King or his
7 testimony? All right. You can move on
8 to the last witness.

9 MR. BUTLER: Your Honor, the
10 last witness who would testify would be
11 Mr. John Sheehan. He would testify that
12 he is the vice president and chief
13 restructuring officer at Delphi. And he
14 would testify that from the period of
15 March 4th, 2005 through October 8th, he
16 also acted as the interim chief
17 financial officer, chief accounting
18 officer and comptroller of Delphi
19 Corporation. Having joined Delphi in
20 July of 2002 as chief accounting officer
21 and comptroller, Mr. Sheehan would
22 describe his role at Delphi as being
23 involved and being tasked with the
24 principal responsibility for all aspects
25 of the company's restructuring. And as

1 DELPHI CORPORATION
2 part of those duties, he would say he's
3 responsible for reviewing and analyzing
4 the company's assets and operating
5 financial strategies, as well as the
6 company's business plan and financial
7 projections, and being responsible for
8 the review and analysis and negotiation
9 of proposals to the company in
10 connection with third-party
11 transactions, including proposals for
12 DIP financing. Mr. Sheehan would
13 testify that he is familiar with the
14 company's cash needs and that he
15 developed that understanding during his
16 period of responsibility at the company
17 as chief accounting officer and
18 comptroller and that he is very familiar
19 with requirements of how the company
20 operates globally; its need for
21 financing the operations of the
22 enterprise, the need for dealing with
23 essential suppliers and customers and
24 operating the debtors' business. He
25 would testify that he was involved in

1 DELPHI CORPORATION
2 the process which resulted in the
3 procurement of the DIP financing that's
4 before the Court, as evidenced in
5 Debtors' Exhibits 1-2 and 2(a). He
6 would describe that process began early
7 this year on a contingency basis as the
8 board considered various alternatives
9 involving a consensual structuring of
10 the company's operations in the United
11 States. And, as part of that analysis,
12 the company retained financial advisors
13 to assist it and its board of directors
14 in evaluating its options. Mr. Sheehan
15 would testify that Delphi first retained
16 Rothschild Inc. and Rollerton Associates
17 as the company's financial advisors and
18 investment bankers. And subsequently
19 retained legal counsel and then also
20 retained FTI Consulting. He would
21 testify that Rothschild was engaged, in
22 part, to assist the company in
23 soliciting and evaluating various
24 financing proposals, both originally
25 outside of Chapter 11 and ultimately

1 DELPHI CORPORATION
2 inside of Chapter 11 and that they were
3 tasked with helping him and others at
4 the company negotiate the best financing
5 transaction that would be available to
6 the company to meet its needs and would
7 also give the company the maximum amount
8 of flexibility when considering various
9 alternatives. Mr. Sheehan would testify
10 that in August of this year that he,
11 after consultation with other members of
12 management and a presentation at the
13 board of directors of the company,
14 directed Rothschild to begin to reach
15 out and begin a process for considering
16 DIP financing proposals on a contingency
17 basis. That occurred at approximately
18 the same time that the debtors issued
19 public statements about a path A and
20 path B, sort of a QL approach to
21 evaluating and dealing with their legacy
22 liabilities and portfolio restructuring
23 requirements here in the United States.
24 Those public announcements were made in
25 early August, and Mr. Sheehan would

1 DELPHI CORPORATION
2 testify that Rothschild was asked to
3 begin this contingency process shortly
4 thereafter. Mr. Sheehan would testify
5 that Rothschild, at the direction of the
6 company, approached JP Morgan Chase and
7 a number of other global financial
8 institutions, including Citibank,
9 Dorchester Bank, and GE Capital with
10 respect to debtor-in-possession
11 financing. He would testify that process
12 resulted in a competitive process that
13 concluded in the proposals that had been
14 admitted into evidence as Debtors' 1 and
15 Debtors' 6-12. Mr. Sheehan would
16 testify that in negotiating with those
17 lenders, Mr. Sheehan was personally
18 involved in, along with Rothschild, in
19 describing the company's situation and
20 was familiar with the materials that
21 were provided in the proposals that were
22 obtained from each of the lenders and
23 the various structures that were
24 involved. Mr. Sheehan would also
25 testify that he was similarly concerned

1 DELPHI CORPORATION
2 on behalf of the company about the three
3 sort of principal criteria for
4 evaluating these proposals. Again,
5 those criteria being the cost of the
6 facility, the structure and size of the
7 facility and its execution risk. Mr.
8 Sheehan would testify that his weighing
9 of those issues was, generally, similar
10 to that of these advisors, but that
11 initially he spent some time and focus
12 on the cost of the facility, feeling a
13 need to ensure that the company was
14 appropriately committing its financial
15 resources. And that he was extremely
16 concerned based on his involvement with
17 the essential suppliers and customers of
18 the business on making sure that the
19 proposal could be executed successfully;
20 that those were among his principal
21 focuses. Mr. Sheehan would testify that
22 he participated in the negotiations as a
23 principal from time to time throughout
24 the process; that he ultimately
25 recommended to the other members of

1 DELPHI CORPORATION
2 management and the board of directors,
3 the commitment letter that is set forth
4 at Debtors' 1, that in Mr. Sheehan's
5 judgment that proposal was the only
6 financing available to the debtors that
7 could meet the debtors' requirements
8 going forward. Mr. Sheehan believes
9 that that proposal was negotiated in
10 good faith, in an arm's-length basis
11 between the company and JP Morgan Chase
12 and eventually Citibank. Your Honor,
13 Mr. Sheehan would also testify that he's
14 familiar with the general terms and
15 conditions of the financing transaction
16 and that, in his judgment, those terms
17 are, and in the business judgment of the
18 debtors, fair and reasonable and
19 appropriate under the circumstances.
20 That in his view, this financing
21 transaction represents the culmination
22 of what Mr. Sheehan viewed to be an
23 exhaustive solicitation process for
24 financing conducted by the company and
25 it was designed to meet the company's

1 DELPHI CORPORATION
2 needs in these unusual circumstances.
3 Mr. Sheehan would also testify that he
4 has reviewed the DIP projections that
5 form the basis of the DIP financing case
6 that was presented to the debtors and
7 which is represented in part in Debtors'
8 13. And that he believes the size of
9 the facility, the 4.5 billion overall,
10 is required, again, because of the
11 debtors' contemplated needs as they move
12 through the process. Your Honor, that
13 would be the sum and substance of Mr.
14 Sheehan's testimony.

15 THE COURT: All right. Does
16 anyone wish to cross-examine Mr.
17 Sheehan? All right, here and now, I
18 will accept his testimony.

19 MR. BUTLER: Your Honor, that
20 would represent the evidentiary record
21 that the debtors have. The testimony of
22 those three witnesses and the 29
23 exhibits admitted into evidence and we
24 would rest on that record.

25 THE COURT: Okay. I'm assuming

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2 in light of the first part of the
3 hearing that no one else has any
4 evidence they want to submit. Okay,
5 I'll close the evidentiary portion of
6 that hearing then.

7 MR. BUTLER: Your Honor, and
8 given the presentation I made earlier, I
9 think at this point we will simply rest
10 on the papers. There's a proposed order
11 we'd like Your Honor to consider. And
12 we would intend to reflect the changes
13 that we have discussed on the record
14 that were indicated to actually be
15 changes to the order. While we know
16 others will want to look at it, we have
17 committed to the creditors' committee
18 that they and we will take our time this
19 evening to get it right. We have
20 language, much of which was read into
21 the record. There's not much actually
22 left to be done, but we want to make
23 sure that we have a chance to flyspeck
24 the order and we'll get it over to the
25 committee and the debtors will get the

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2 order over to you in the morning. We
3 would like, Your Honor, if you're
4 inclined to approve the financing, to
5 approve it on the record today so we can
6 be in a position to announce, publicly,
7 it's been approved. And also to make
8 clear that to the extent somehow there
9 is some disagreement in what the form of
10 the order says, all that would be
11 brought back to Your Honor tomorrow is a
12 settlement of the order rather than a
13 revisiting of the merits of this case.

14 THE COURT: Right. All right.
15 I do approve the financing and adequate
16 protection provisions set forth in the
17 black-lined order as included on the
18 record at today's hearing. And the
19 record will reflect that the parties are
20 moving forward to complete the order and
21 revise on that. All we're looking for
22 is an order that embodies the agreed
23 order as set forth on the record. It's
24 clear to me that this is, at this point,
25 a consensual DIP financing and adequate

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2 protection order which, I think, may I
3 extend praise to all of the
4 professionals involved in resolving the
5 issues which were not, in all respects,
6 easy to resolve. I also applaud the
7 fact that the various parties of
8 interest were each prepared to sacrifice
9 in their positions to get to that point.
10 Based on the proper testimony, I find
11 that the DIP agreement that was
12 negotiated in all its length, I can
13 permit proper and in good faith and/or
14 mistreatment under Section 354(e) of the
15 Bankruptcy Code. In loss of further
16 find that the debtors have satisfied
17 their burden under section 364(c) and
18 364(d) from the priority claims, DIP
19 priority claims in any and all doubt.
20 You would hold up in my original
21 reactions to this version was to
22 question whether in fact the debtors
23 needed such a large facility here. I
24 incorporate that they will not need to
25 draw down on that significantly, but,

1 DELPHI CORPORATION

2 you know, I'm convinced that the
3 facility adequately satisfies the
4 debtors' needs and provides them
5 sufficiently, perhaps even abundantly,
6 availability to conduct their bankruptcy
7 case and legal in podium too. You know,
8 conduct their businesses in due course.
9 So, I look forward to getting your
10 letter and, you know, reviewing in
11 letter of record.

12 MR. BUTLER: Your Honor, thank
13 you very much and thank you to you and
14 everyone in chambers for the assistance
15 over the last few days as we moved
16 forward to this hearing. Your Honor, I
17 would plant that the matter 18 on the
18 agenda which is the cash management
19 matter in light of the disposition of
20 this order and the agreement of the
21 committee, I'd ask Your Honor to approve
22 the cash management order as negotiated
23 with the Pension Benefit Guaranty
24 Corporation on a final basis.

25 THE COURT: And the committee.

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2 MR. BUTLER: In case of
3 submitting its objection as to that
4 matter there's a --

5 MR. ROSENBERG: Well, I think
6 the order has to be rewritten.

7 MR. BUTLER: Well, you know,
8 we'll be happy to submit, and we'll
9 submit the order tomorrow morning.

10 THE COURT: Maybe will reflect
11 the same language with respect to the
12 intercompany loan treatment as to DIP
13 order.

14 MR. BUTLER: Yes, Your Honor.

15 THE COURT: Okay, that's fine.
16 And I will approve that.

17 MR. ROSENBERG: Yes, I'd like
18 to add, Your Honor, the review language
19 --

20 THE COURT: Oh, yes. That goes
21 without saying.

22 MR. PASCOE: This is Timothy
23 Pascoe for Ford Motor Company. What Mr.
24 Butler says submit a copy of the revised
25 order for the objecting party as well.

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2 MR. BUTLER: Out of those 50 or
3 60 objecting parties, I mean -- Your
4 Honor, we want to be able to use the
5 committee to submit this in accordance
6 with the record.

7 THE COURT: I think, again, I
8 don't want this turn into a negotiating
9 section. It really is to reflect what I
10 set forth on the record. But I think --
11 I think you have to e-mail it to the
12 objectants if you have the e-mail
13 address, if you don't I would instruct
14 the objectants to provide -- who should
15 I send the e-mail address to.

16 MR. BUTLER: Why don't we just
17 make it easier now, I'll get it to the
18 right people, send it to
19 jbutler@skadden.com and I'll make sure
20 it gets to where it needs to go.

21 THE COURT: All right. But,
22 again, I intend to review it and write
23 up today's record and I think it's
24 important to get it in there tomorrow --
25 by the end of the day tomorrow. So

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2 rather than negotiate provisions, if
3 there's something that you think the
4 debtors have left out, you can send me a
5 short letter to that effect. But I
6 don't want to get people hung up on
7 negotiating language yet.

8 MR. PASCOE: I understand,
9 thank you.

10 THE COURT: Okay. One brief
11 thing. The way the language, in light
12 of the fact that this debtor is training
13 on, I just urge the agent to somehow
14 keep a record of what language and
15 elections people have made so that's
16 it's dated and sometimes in pieces. We
17 don't have confusion at the end of the
18 case.

19 MR. ROSENBER: We will, Your
20 Honor.

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24 (Continued on next page.)

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2 MR. BUTLER: Your Honor, thank
3 you very much; that concludes the agenda
4 for today.

5 THE COURT: Thank you.

6 (Whereupon these proceedings
7 were concluded.)

8 (Time noted: 2:27)

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2 I, Esther Accardi, hereby certify that
3 the foregoing is a true and correct
4 transcription, to the best of my ability, of
5 the sound recorded proceedings submitted for
6 transcription in the matter of:
7 DELPHI CORPORATION.

8

9 I further certify that I am not employed
10 by nor related to any party to this action.

11

12 In witness whereof, I hereby sign this
13 date:

14 February 26, 2006

15

16

17 _____
Esther Accardi

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